Supreme Court, U.S.
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In the
Supreme Court of the United States

OCTOBER TERM, 1993

TIMOTHY D. WILLIAMS, JR., ET AL
PETITIONERS

v

BURNHAM BROADCASTING COMPANY,
A LIMITED PARTNERSHIP
d/b/a WVUE-TV 8
RESPONDENTS

PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES SUPREME COURT
OF SUPREME COURT STATE OF LOUISIANA

PETITION FOR WRIT OF CERTIORARI

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53 pp

QUESTIONS PRESENTED FOR REVIEW

1. The Injunction Issued By The District Court Enjoining and Prohibiting Petitioners' Protest of WVUE-TV 8 and The Boycott of Its Advertisers Is Constitutionally Infirm. The Decision of the Court of Appeal Affirming The Injunction and that of the Louisiana Supreme Court denying petitioners' writ application Conflict With The Law As Stated By The United States Supreme Court In *NAACP v. Claiborne Hardware Co.*, 102 S.Ct. 3409 (1982), And The United States Fifth Circuit Court of Appeals in *Machesky v. Bizzell*, 414 F.2d 283 (5th Cir. 1969).

2. The Preliminary Injunction issued by the District Court was overbroad and, therefore, unconstitutional.

3. The injunction issued by the District Court is content based and not narrowly drawn to serve any compelling state interest.

PARTIES TO THE PROCEEDINGS

In addition to the parties listed in the caption, the following were parties in the courts below: Donnie Williams, The Christian Church of New Orleans, and The Christian Church of New Orleans Investigative and Interrogative Body.

TABLE OF CONTENTS

Questions Presented for Review i

Parties to the Proceedings ii

Table of Contents iii

Table of Authorities v

Opinions Below 1

Jurisdiction 2

Constitutional Provision Involved 2

Statement of the Case 2

Reasons for Granting the Petition 8

Conclusion 21

APPENDIX

Judgment of the Civil District Court for the Parish of Orleans granting plaintiff's petition for injunctive relief A-1

Judgment of the Civil District Court for the Parish of Orleans finding defendants in contempt of court A-5

TABLE OF CONTENTS (continued)

Judgment of the Fourth Circuit Court of Appeals denying defendants' writ application A-9

Judgment of the Louisiana Supreme Court denying defendants' writ application A-5

TABLE OF AUTHORITIES

CASE: PAGE

Aptheker v. Secretary of State, 84 S.Ct. 1659, 1665 (1964) 18

Consol Edison Co. v. Public Service Com'n, 100 S.Ct. 2326, 2332 (1980) 20

Cornelius v. NAACP Legal Defense Fund, 105 S.Ct. 3439, 3449 (1985) 19

Eastern Railroad Presidents Conference v. Noerr Motor Freight, 81 S.Ct. 523 (1961) 17

Henry v. First Nat. Bank of Clarksdale, 595 F.2d 291, 304 (5th Cir. 1979) 10,17

Hudgens v. NLRB, 96 S.Ct. 1029, 1034 (1976) 19

Machesky v. Bizzell, 288 F.Supp. 295 (N.D.Miss.1968) 12,14

Machesky v. Bizzell, 414 F.2d 283 (5th Cir. 1969) 9,10,18

N.A.A.C.P. v Claiborne Hardware Co., 102 S.Ct. 3409 (1982) 9,10,13,18,21

Perry Educ.Assn. v. Perry Local Educators' Assn. 103 S.Ct. 948 (1983) 19,20

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v.

BURNHAM BROADCASTING COMPANY,
A LIMITED PARTNERSHIP
d/b/a WVUE-TV 8
RESPONDENTS

PETITION

Timothy D. Williams, Jr., Donnie Williams and The Christian Church of New Orleans Interrogative and Investigative Body petition for a writ or certiorari to review the final judgment of the Louisiana Supreme Court on February 25, 1994.

OPINIONS BELOW

The opinion of the Louisiana Supreme Court (94-0150 Pets. App. 21-a) is not reported. The opinion of the Louisiana State Court of Appeal for the Fourth Circuit is reported at 629 So. 2d 1335 (1993) (Pet. App. 8-a). The opinion of the Civil District Court for the Parish of Orleans (92-20258 Pet. App. 1-a)) is not reported.

JURISDICTION

The judgment of the Louisiana Supreme Court was entered on February 25, 1994. The jurisdiction of this court is invoked pursuant to 28 U.S.C. §1257(a).

CONSTITUTIONAL PROVISION INVOLVED:

The 1st Amendment to the United States Constitution provides as follows:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of people to peaceably to assemble, and to petition the government for redress of grievances.

STATEMENT OF THE CASE

Petitioner, Christian Church of New Orleans, is a non-denominational church, which was founded by Pastor Timothy Williams, another petitioner herein. The church has a membership of approximately 100, included among which is Donnie Williams, also a petitioner herein. The church itself is primarily concerned with the spiritual concerns of its members. To investigate and deal with the numerous social issues of today, particularly those of racism and injustice, the church established The Christian Church of New Orleans Investigative and Interrogative Body ("TCCNOIIB").

There was some concern by TCCNOIIB that WVUE-TV 8 was not reporting the news in an impartial manner,

particularly as it pertained to the black community. The Christian Church was engaged in numerous worthwhile projects of special interest not only to black people, but to the community as a whole. Inexplicably, WVUE-TV 8 chose not to provide coverage to those projects, causing TCCNOIIB to feel that the failure to do so was racially motivated. Petitioner, Pastor Timothy Williams, acting on behalf of TCCNOIIB, commenced discussions with respondent, Burnham Broadcasting Company, A Limited Partnership, d/b/a WVUE-TV-8 ("WVUE"), in an attempt to resolve this matter. It was his intention to get respondent to provide a more balanced coverage of the news, particularly as it relates to the black community.

Initially, several productive meetings were held between Pastor Williams and representatives of WVUE. As a matter of fact, Pastor Williams thought that the matter had been resolved when WVUE, during the latter part of 1990, did a three-part series on the issue of racism in the workplace, covering some of the protests in which TCCNOIIB was involved. Unfortunately this effort was not sustained by WVUE, causing Pastor Williams to write a letter to Kevin Brennan of WVUE, dated February 26, 1991, in which he stated: " . . . the basic purpose of this letter is to binatingly disclose my extensive, deplorable grief toward your ultimate handling of the gravitous issues of racism and paternalism, and our congruent decision to protest against channel 8, and to start a local and national boycot against your advertising sponsors."

This letter was occasioned by the failure and/or refusal of WVUE to allow TCCNOIIB, through Pastor Williams, to appear on its Newsmaker program to discuss

social issues which WVUE had covered inadequately in an earlier program. TCCNOIIB was not requesting time set aside for paid advertisements; it was merely requesting that Pastor Williams be included on a program which WVUE highlights events of concern to viewers within its viewing area. One does not have to pay to appear on this program nor is one compensated.

By October of 1992, the breach had become more serious. In a letter dated October 11, 1992, Pastor Williams stated:

> My othe reason for writing, is to officially validate the fact that because of your neutral position in deciding to take a back burner position toward racism and paternalism, while doing coverage on dogs, cats as number one issues over racism: we have decided to protest and boycott against your station, and your sponsors who take sides with you indefinitely until we break the backbone of racism.

TCCNOIIB commenced a protest of WVUE and a secondary boycott of some of its advertisers, primarily those located within the black community. Initially, TCCNOIIB sought to obtain the advertisers' voluntary cooperation in the protest against WVUE, asking them to withdraw their advertisements until such time as WVUE ceased its practices of racism and paternalism. When several of the advertisers continued to do business with WVUE, a secondary boycott of their businesses was instituted. As a result of the secondary boycott, several advertisers agreed to withdraw their advertisements from

WVUE.

The protest and boycott were conducted in a peaceful manner. They were characterized by singing and non-violent picketing. Patrons were not prohibited from entering the establishments being boycotted nor was there even a threat of violence.

Appellee, WVUE, filed a Petition for Injunctive Relief on November 25, 1992, seeking to enjoin Appellants from picketing its television stations and boycotting its advertisers. The hearing was held on December 10, 1992, Honorable Max Tobias, Judge, Division "L", Civil District Court for the Parish of Orleans, presiding. On the 11th day of December, 1992, Judge Tobias issued a preliminary Writ of Injunction, enjoining, prohibiting and restraining petitioners from:

> (1) threatening, whether directly or indirectly, the plaintiff, or plaintiff's agents, employees or customers, with picketing or public displays of protest if Timothy D. Williams, Jr., Jerry Davis, Jr. and/or The Christian Church of New Orleans Investigating and Interrogating Body (or his, their or its agent(s) is/are not granted free air time on the plaintiff's television station (WVUE-TV 8), or news coverage on the plaintiff's television station (WVUE-TV 8);
>
> (2) seeking or extorting from the plaintiff, its agent(s), employee(s) or customer(s) something of value for not picketing or publicly protesting;
>
> (3) picketing, threatening to picket, protesting or

> threatening, whether directly or indirectly, any customer of the plaintiff to entice or cause such customer of the plaintiff to cease conducting business with the plaintiff, or demanding or extorting anything of value from such customer in lieu of picketing, threatening to picket or publicly protesting. (App. 1-a)

Judge Tobias further stated that "[e]xcept as prohibited by the foregoing, nothing herein shall prohibit any defendant from exercising his or her rights protected under the First Amendment to the Constitution of the United States of Section 7 Article I of the Louisiana Constitution to seek redress of grievances from government or to entice government to enact laws or policies against racism or paternalism."

Subsequent to the judgment Petitioner Donnie Williams attempted to contact the store manager of St. Germaine's Furniture, a former advertiser on WVUE-8, to discuss some complaints lodged by customers of the store; further, TCCNOIIB commenced a boycott of CAMPO's, an advertiser on WVUE-8.

As a result thereof, WVUE-8 filed a Motion for Contempt, seeking to have petitioners held in comtempt of court. The hearing was scheduled for and held on December 23, 1992. During said hearing, WVUE-8 called three (3) witnesses to testify in support thereof. Each witness called by WVUE-8 admitted, under oath, that petitioners had not (a) sought to coerce anything of value from WVUE-8 or its advertisers, (b) sought to threaten, entice or cause any of WVUE-8 customers to cease doing business with

WVUE-8, or (c) demanded anything of value from WVUE-8 or any of its customers.

Further, there was no evidence adduced at the hearing that the boycott against Campo's was as a result of its decision to continue to do business with WVUE.

Those facts notwithstanding, the district court, Judge Garvey presiding, found petitioners to be in contempt of the preliminary injunction rendered on December 11, 1992, and sentenced petitioner, Donnie Williams, to spend thirty (30) days in jail and a fine of ONE THOUSAND AND 00/100 ($1,000.00) DOLLARS. Also, the execution of the jail sentence was delayed until January 4, 1993. Petitioner, TCCNOIIB, was fined ONE THOUSAND AND 00/100 ($1,000.00) DOLLARS. (App. A-5)

The trial court did not recite the factual basis for its finding that petitioners were in contempt. Petitioner, Donnie Williams, filed a Petition for Writs and Stay of Execution of Sentence with the Fourth Circuit Court of Appeals, which was denied. Petitioner then sought an Application for Writ of Certiorari or Review to the Louisiana Supreme, which was granted. The Supreme Court remanded the case to the Fourth Circuit Court of Appeal for a determination on the merits.

On remand, the Fourth Circuit granted petitioners' writ application, holding that the district court, in holding petitioner in comtempt of court, failed to follow the requirements of C.C.P. art. 225(B). The trial judge was ordered to issue an order complying with art. 225(B).

The district court reviewed the transcript of the contempt proceeding and, once again, found petitioners to be in contempt. It reinstated its previous fine and imprisonment. Petitioners asked the Fourth Circuit Court of Appeal to review the proceedings in this matter to determine (1) the propriety of the contempt finding; and (2) petitioners' conduct within the parameters of the writ of preliminary injunction. Petitioners also sought a stay of execution of the decision rendered by the district court.

In a decision rendered on December 16, 1993, the Fourth Circuit Court of Appeal affirmed the decision of the trial court, denied the relief requested in petitioners' writ application and lifted the stay respective to the contempt finding of the district court. (App. 8-a)

Petitioners timely filed an application for writs of certiorari or review with the Louisiana Supreme Court. In a decision rendered on February 25, 1994, the writ application was denied. (App. 21-a)

REASONS FOR GRANTING THE PETITION

The Louisiana Supreme Court, in denying Petitioners' writ application, erroneously let stand questions of considerable public importance that conflict with the First Amendment to the United States Constitution and decisions of this court. By refusing to grant petitioners' writ application, the Louisiana Supreme Court upheld the district court and appellate court's determination that petitioners' peaceful protests and secondary boycotts were not entitled to protection under the First Amendment to the United States Constitution. That determination is con-

trary to First Amendment to the United States Constitution, to its interpretation in *N.A.A.C.P. v Claiborne Hardware,* 102 S.Ct. 3409 (1982), and it is in conflict with jurisprudence in other circuits. There is no basis in the Constitution, legislation or in jurisprudence for the deterination that petitioners' activities were not protected by the First Amendment. Accordingly, review by this Court is clearly warranted.

I. The Injunction Issued By The District Court Enjoining and Prohibiting Petitioners' Protest of WVUE-TV 8 and The Boycott of Its Advertisers Is Constitutionally Infirm. The Decision of the Court of Appeal Affirming The Injunction and that of the Louisiana Supreme Court denying petitioners' writ application Conflicts With The Law As Stated By The United States Supreme Court In *NAACP v. Claiborne Hardware Co.,* 102 S.Ct. 3409 (1982), And The United States Fifth Circuit Court of Appeals in *Machesky v. Bizzell,* 414 F.2d 283 (5th Cir. 1969).

The significance of this case cannot be overstated, for it concerns two of the most precious rights known to humankind: freedom of speech and peaceable assembly. These rights are embodied within the protections of the First Amendment to the United States Constitution, which provides, in pertinent part, that "**Congress shall make no law . . . abridging the freedom of speech . . .; or the right to peaceably assemble[.]**" It is applicable to the states through the due process clause of the Fourteenth

Amendment[1]

Petitioners herein engaged in a protest of Respondents and its stations and a secondary boycott of Respondent's advertisers. The purpose of the boycott and protest was to bring to the forefront a matter of great social concern, to wit: Respondent's unfair and biased news coverage of events and issues relevant to the black community. Petitioners were not seeking to advance any economic interests, but social concerns. Courts have demonstrated a great deal of "sensitivity to the heightened First Amendment concerns implicated in picketing or boycotts in furtherance of important public issues as opposed to narrow economic issues." *Henry v. First Nat. Bank of Clarksdale,* 595 F.2d 291, 304 (5th Cir. 1979). [Citations omitted.]

Illustrative of this heightened sensitivity are: *Machesky v. Bizzell,* 414 F.2d 283 (5th Cir. 1969), and *N.A.A.C.P. v. Claiborne Hardware,* 102 S.Ct. 3409 (1982). In *Machesky,* appellants, members of the "Greenwood, Mississippi, instituted a boycott against all white merchants in Greenwood, Mississippi, with the stated objective being to "eliminate segregation and discrimination; to make all men free; [and] to create fair employment practices." *Id.* at 285. The white merchants instituted a class action lawsuit in state court seeking to enjoin the protest

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[1] The Fourteenth Amendment, in pertinent part, prohibits any State from depriving "any person of life, liberty, or property, without due process of law." See ***Edwards v. South Carolina,*** **84 S.Ct. 143 (1963);** ***Cox v. Louisiana,*** **85 S.Ct. 453 (1965);** ***Shuttlesworth v. City of Birmingham, Ala.,*** **89 S.Ct. 935 (1969);** ***Police Dept. of Chicago v. Hardware, 102 S.Ct. 3409 (1982).***

and boycott. At the conclusion of the evidentiary hearing, and submission of briefs, the trial

> "1. Picketing or marching, or persuading or inducing any other person or persons to picket or march, in any organized form whatsover, with or without signs or placards, upon Howard Street or upon Carrollton Avenue or in the Highland Park Shopping Center in the City of Greenwood, or within 300 feet of the place of business in the City of Greenwood of any of the Complainants in this cause, a list of which complainants is attached hereto and is made a part thereof.
>
> "2. Loitering or congregating, or inducing or persuading any person or persons to loiter or congregate, upon any sidewalk or street or other public area in the City of Greenwood for the purpose of doing anything whatsoever, directly or indirectly, to induce, persuade,or coerce any person or persons not to trade or do other business with the business establishments of any of the said complainants in the City of Greenwood, Mississippi.
>
> "3. Stationing themselves or anyone else as a lookout or lookouts for the purpose of observing customers entering, leaving, or shopping or doing other business in the business establishments of any of the said Complainants in the City of Greenwood, Mississippi.
>
> "4. Making or preparing or causing to be made or prepared a record of the names, automobile license number or other identi-

fication of person or persons entering or trading in the business establishments of any of the said Complainants in the City of Greenwood, Mississippi.

"5. Publishing, distributing, or announcing in any manner the name or names of persons who have entered or traded in or shall hereafter enter or trade in the business establishments of any of said complainants in the said City of Greenwood or causing such names to be published, distributed or announced; and

"6.Threatening, intimidating, coercing, or using force or violence upon any person or persons so as to dissuade such or persons from entering or trading in the business establishments of any of said Complainants in the said City of Greenwood."

Id. at 285-286.

An action was commenced in federal court seeking declaratory relief and an order vacating the injunction, or, alternatively, limiting its scope. The complaint was dismissed by the District Court. See *Machesky v. Bizzell*, 288 F.Supp. 2195 (N.D.Miss.1968).

On appeal the Fifth Circuit took issue with the expansive nature and scope of the injunction, finding that it "prohibits all picketing in the designated business areas of Greenwood, for whatever purpose and in whatever manner carried out." *Id.* at 290. In reversing and remanding the case, the Fifth Circuit held, inter alia, that "the state court

court injunction herein is unconstitutionally overbroad in that it lumps the protected with the unprotected in such a way as to abridge important public interests in the full dissemination of expression on public issues." *Id.* at 291.

N.A.A.C.:P. v. Claiborne Hardware Co., 102 S.Ct. 3409 (1982), illustrates the deference accorded to social protests by the Supreme Court. Black members of a biracial committee organized to discuss racial problems in Claiborne County, Mississippi, feeling frustrated with the lack of progress being made by the committee, submitted a list of grievances entitled "Demands for Racial Justice" to the public officials of Port Gipson and Claiborne County. Esentially, it called for the "desegregation of all public schools and public facilities, the hiring of black policemen, public improvements in black residential areas, selection of blacks for jury duty, integration of bus stations so that blacks could use all facilities, and an end to verbal abuse by law enforcement officials." *Id.* at 3418. The list was subsequently amended to demand the hiring of black clerks by all of the stores. A response was requested by April 1.

When a favorable response was not received by April 1, 1966, a meeting called by the NAACP was held, where there was a unanimous vote of those present to boycott the white merchants of Claiborne County. The express purpose of the boycott was to obtain compliance by both civic and business leaders with the list of grievances submitted on behalf of the black residents of Claiborne County. it was supported by speeches and nonviolent picketing.

There were isolated instances of violence associated with the boycott; they were aimed not at the white merchants, but at those who chose to violate the boycott. On the whole, it was a peaceful boycott; no arrests were made.

As in *Machesky*, the white merchants commenced a state court action for injunctive relief and damages against the individual participants and civil rights organizations involved in the boycott. Plaintiffs contended that their activities were protected by the First Amendment to the United States Constitution. This contention was rejected by the chancellor, finding that plaintiffs were liable for (1) malicious interference with the merchants' businesses, (2) a violation of the state statute prohibiting statutory boycotts, and (3) violation of the state's antitrust statute. The Mississippi Supreme Court affirmed the decision of the chancellor, but only on the chancellor's common law tort theory.

It likewise rejected petitioners' First Amendment argument, finding that petitioners were engaged in a conspiracy "to use force, violence, and 'threats' to effectuate the boycott." *Id.* at 3416. The court did find that respondents did not establish their case respective to 38 of the defendants and dismissed them from the case.

The case was appealed to the United States Supreme Court. The court was called upon to decide "whether petitioners' activities are protected in any respect by the Federal Constitution and, if they are, what effect such protection has on a lawsuit of this nature." *Id.* at 3422.

In resolving the first issue, the court emphasized the

fact that the "boycott was supported by speeches and nonviolent picketing." *Id.* at 3422. As the court made clear, "[e]ach of these elements of the boycott is a form of speech or conduct ordinarily entitled to protection under the First and Fourteenth Amendments." *Id.* [T]he boycott [herein] clearly involved constitutionally protected activity. The established elements of speech, assembly, association, and petition, "though not identical, are inseparable." Through exercise of these First Amendment rights, petitioners sought to bring about political, social, and economic change. Through speech, assembly, and petition — rather than through riot or revolution — petitioners sought to change a social order that had consistently treated them as second class citizens. *Id.* at 3425. **[Citation omitted.]**

Having established that the conduct was constitutionally protected, the court then focused on the power of the State to prohibit peaceful protests and boycotts. Addressing that issue, the court stated that "[w]hile States have broad power to regulate economic activity, we do not find a comparable right to prohibit peaceful political activity such as that found in the boycott in this case." *Id.* at 3425. Differentiating between violent and nonviolent forms of expressions, the court held that the "nonviolents elements of petitioners' activities are entitled to the protection of the First Amendment."

Applying those principles to the case at bar, Petitioners' conduct was protected by the First Amendment. First, the protest and boycott were conducted by TCCNOIIB, the social arm of the Christian Church. Second, the stated purpose of the protest and boycott was to take issue with Respondent's neutral position regarding

racism and paternalism. Third, it was entirely peaceful and nonviolent. And, fourth, it was for purely social reasons, not economic.

The trial court ruled that Petitioners were engaged in extortionate behavior thereby depriving the boycott of any First Amendment protection. The court admitted the legal and factual insufficiency of its ruling, stating that there was an "absence of cases on point." That fact notwithstanding, the trial court strained to find a case supportive of its position. The one case it did cite, *U.S. v. Hutson*, 843 F.2d 1232, 1235 (9th Cir. 1988), reflects the great lengths traveled by the court to reach the conclusion that Petitioners' conduct was not deserving of constitutional protection.

First, *Hutson* was a criminal case brought by the United States pursuant to 18 U.S.C. § 876. Second, the defendant was not contending that he was engaged in a constitutionally protected activity; he was contending that the statute under which he was convicted was overbroad and, therefore, violative of the First Amendment. Third, the facts of that case are so bizarre that any comparison to the case before the court would be a grave injustice. The defendant was indicted and found guilty of demanding $10,000.00 from his former fiance in return for the sexually explicit photographs he possessed of her and her husband. This was extortion in its most blatant form.

There is no way one can reasonably compare a demand for more television coverage for black issues to a demand for $10,000.00 in return for the return of sexually explicit photographs, particularly where the television

coverage demanded is on a show for which payment is neither required nor expected. One is protected under the First Amendment, whereas the other is not.

In affirming the trial court's finding that Petitioners' conduct was not protected by the First Amendment, the Louisiana Court of Appeals for the Fourth Circuit cited an equally inapposite case: *United States v. Quinn*, 514 F.2d 1250 (5th Cir. 1975), *cert. denied Quinn v. United States*, 96 S.Ct. 1430 (1976). In *Quinn*, payments were made to Reverend Quinn for the sole purpose of bringing an end to boycotts called by him. Once the payments were made, the boycotts ceased. Clearly, that is not present in the instance case. Petitioners did not seek money, they merely sought an opportunity to appear on Respondent's Newsmaker Program — a program for which money is neither sought nor offered.

Also, Petitioners' boycott of Respondent's advertisers is a protected activity, not subject to the prohibition set forth in the Sherman Act against concerted refusals to deal. *Cf. Eastern Railroad Presidents Conference v. Noerr Motor Freight*, 81 S.Ct. 523 (1961). Appellants' secondary boycott is "intimately bound up with political speech and [is] unrelated to any economic interests." *Henry, id.* at 304.

II. THE PRELIMINARY INJUNCTION ISSUED BY THE DISTRICT COURT WAS OVERBROAD AND, THEREFORE, UNCONSTITUTIONAL.

Assuming arguendo that parts of the protest and/or boycott were unlawful, that in and of itself does not serve

as a basis for the court outlawing lawful conduct as well. An injunction with "sweep[s] unnecessarily broadly and thereby invade[s] the area of personal freedoms" is overbroad and, therefore, constitutionally infirm. *Aptheker v. Secretary of State*, 84 S.Ct. 1659, 1665 (1964). (Citations omitted)

In the case at bar, the trial court issued an injunction which effectively prohibits any form of protest by Appellants other than that which is designed to "seek redress of grievances from government or to entice government to enact laws or policies against racism or paternalism." This is patently unconstitutional. This injunction would effectively outlaw the protests and boycotts found constitutionally protected by the courts in *Machesky* and *NAACP v. Claiborne Hardware Co.*

The district court appears to be of the opinion, albeit erroneously, that private businesses are immune from protests and boycotts, particularly those that are of a coercive, threatening nature. Clearly, there is no legal support for this opinion; if so, it would effectively gut the essential protections of the First Amendment, especially the rights of freedom of speech and assembly. "Speech does not lose its protected character, however, simply because it may embarrass others or coerce them into action." *N.A.A.C.P. v. Claiborne Hardware Co., id.* at 3414. The test is whether Respondents' conduct constituted a "clear and present danger." *Edwards, id.* at 894. As clearly evidenced by the record, Respondents' conduct did not constitute a "clear and present danger."

III. THE INJUNCTION ISSUED BY THE DISTRICT COURT IS CONTENT BASED AND NOT NARROWLY DRAWN TO SERVE ANY COMPELLING STATE INTEREST.

The injunction in the case at bar restricts not only when, where and how petitioners may speak, but, also, what petitioners may say. The injunction permits only those protests and boycotts by petitioners to "seek redress of grievances from government to enact laws or policies against racism and paternalism." Clearly, this injunction is constitutionally infirm.

To determine the limits that can be placed on protected free speech, it is essential to determine the forum where the individual seeks to speak. *Cf. Perry Educ. Assn. v. Perry Local Educators' Assn.* 103 S.Ct. 948 (1983). There are three types of First Amendment fora, "the traditional public forum, the public forum created by government designation, and the nonpublic forum." *Cornelius v. NAACP Legal Defense Fund*, 105 S.Ct. 3439, 3449 (1985). The forum at issue in the present case consists of public streets and sidewalks, both of which are "quintessential public forums." *Perry, id.* at 955. " '[S]treets, sidewalks, parks, and other public places are so historically associated with the exercise of First Amendment rights that access to them for the purpose of exercising such rights cannot constitutionally be denied broadly and absolutely.' " *Hudgens v. NLRB*, 96 S.Ct. 1029, 1034 (1976) (quoting *Food Employees v. Logan Valley Plaza*, 88 S.Ct. 1601, 1606 (1968).

A restriction that regulates only the time, place, or manner of speech may be imposed so long as it is reasonable. But when regulation is based on content of speech, governmental action must be scrutinized more carefully to ensure that communication has not been permitted merely because public officials disapprove the speaker's view." *Consol. Edison Co. v. Public Service Com'n,* 100 S.Ct. 2326, 2332 (1980) (Citation omitted).

Since the injunction issued in the case at bar prohibits any and all protests by petitioners of relator and boycotts of its advertisers, it is content based. To be enforceable, a content based injunction must be "necessary to serve a compelling state intereest and . . . [be] narrowly drawn to achieve that end." *Perry, id.,* 103 S.Ct. at 954-55 (citations omitted).

Assuming arguendo that the injunction does serve some compelling state interest, it still fails the test of constitutionality. The injunction, by permitting only those protests and boycotts by petitioners which "seek redress from government or to entice government to enact laws or policies against racism and paternalism," is not narrowly drawn to achieve any compelling interest that the state may have. The injunction provides no ample alternative means for petitioners to protests what they perceive to relator's discriminatory or unfair policies and practices.

As evidenced by the contempt order issued by the trial court, *any* protest of relator or boycott of its advertisers by petitioners is violative of the injunction. Such an injunction cannot be allowed to stand!

CONCLUSION

The issuance of a preliminary injunction by the trial court prohibiting, enjoining and restraining Petitioners from engaging in peaceful, non-violent protests of Respondent's television stations and boycotts of Respondent's advertisers violated the First Amendment to the United States Constitution and this Court's decision in *N.A.A.C.P. v. Claiborne Hardware Co.*, 102 S.Ct. 3409 (1982). The protests and boycotts were clearly within the ambit of First Amendment protections. The injunction was overbroad, ensnarling, as it did, legitimate First Amendment activities within its reach. Finally, it was content based and not narrowly drawn to serve any compelling state interest.

These are issues of national significance and, unless addressed by the United States Supreme Court, will recur with alarming frequency.

Respectfully submitted.

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May 26, 1994

APPENDIX A

CIVIL DISTRICT COURT FOR THE
PARISH OF ORLEANS

STATE OF LOUISIANA

NO. 92-20258 DIVISION "C"

BURNHAM BROADCASTING COMPANY,
A LIMITED PARTNERSHIP,
d/b/a WVUE-TV 8

VERSUS

TIMOTHY D. WILLIAMS, JR., ET AL

JUDGMENT

This matter came for hearing on 10 December 1992 on the motion for preliminary injunction sought by plaintiff, Burnham Broadcasting Company, a Limited Partnership d/b/a WVUE-TV 8.

PRESENT: Dominic Gianna and John Keller, Attorneys for Plaintiff; and Ronald Wilson, Attorney for Defendant

For the written reasons assigned:

IT IS ORDERED, ADJUDGED AND DECREED that a preliminary writ of injunction issue herein, upon plaintiff posting a bond in the amount of $500.00, enjoin-

ing, restraining and prohibiting Timothy D. Williams, Jr., Jerry Davis, Jr., and The Christian Church of New Orleans Investigating and Interrogating Body, (individually and collectively) his, their or its agents, members and employees from doing the following:

(1) threatening, whether directly or indirectly, the plaintiff, or plaintiff's agents, employees or customers, with picketing or public displays of protest if Timothy D. Williams, Jr., Jerry Davis, Jr. and/or The Christian Church of New Orleans Investigating and Interogating Body (or his, their or its agent(s)) is/are not granted free air time on the plaintiff's television station (WVUE-TV 8), or news coverage on the plaintiff's television station (WVUE-TV 8);

(2) seeking or extorting from the plaintiff, its agent(s), employee(s) or customer(s) something of value for not picketing or publicly protesting;

(3) picketing, threatening to picket, protesting or threatening, whether directly or indirectly, any customer of the plaintiff to entice or cause such customer of the plaintiff to cease conducting business with the plaintiff, or demanding or extorting anything of value from such customer in lieu of picketing, threatening to picket or publicly protesting. Except as prohibited by the foregoing, nothing herein shall prohibit any defendant from exercising his or its rights protected under the First Amendment to the Constitution of the United States or Section 7 of Article I of the Louisiana Constitution to seek a redress of grievances from government or to entice government to enact laws or policies against racism or paternalism.

Judgment read, rendered and signed this 11th day of December, 1992.

/s/ Max N. Tobias, Jr.

JUDGE

PLEASE SERVE:

1) Timothy D. Williams, Jr.
3027 N. Tonti Street or 2318 Clouet Street
New Orleans, Louisiana

2) The Christian Church of New Orleans
Investigating and Interrogating Body
Through D. Williams, Jr. or Donnie Williams
3027 N. Tonti,
New Orleans, Louisiana

3) Jerry Davis, Jr.
3027 N. Tonti Street or 2318 Clouet Street
New Orleans, Louisiana

4) Donnie Williams
2318 Clouet Street or 3027 N. Tonti Street
New Orleans, Louisiana

5) Timothy D. Williams, Jr., Jerry Davis, Jr., Donnie Williams and The Christian Church of New Orleans Investigating and Interrogating Body, through their attorney of record:
Ronald Wilson, Attorney at Law
837 Gravier Street
New Orleans, Louisiana

A TRUE COPY

/s/ Illegible

Deputy Clerk, Civil District Court
Parish of Orleans
State of La.

12/13 1992

Received $500.00 for

bond of injunction

to be deposited in Registry of Court.
Receipt No. 14282

/s/ Illegible

Clerk.

APPENDIX B

CIVIL DISTRICT COURT FOR THE
PARISH OF ORLEANS

STATE OF LOUISIANA

NO. 92-20258 DIVISION "L"

BURNHAM BROADCASTING COMPANY,
A LIMITED PARTNERSHIP,
d/b/a WVUE-TV 8

VERSUS

TIMOTHY D. WILLIAMS, JR., JERRY DAVIS, JR.,
THE CHRISTIAN CHURCH OF NEW ORLEANS
INVESTIGATING AND INTERROGATING BODY,
AND DEFENDANTS A THROUGH Z

FILED: _____ _____
DEPUTY CLERK

JUDGMENT

This matter came up for hearing on a Motion for Contempt of Court filed by plaintiff, Burnham Broadcasting Company, A Limited Partnership, d/b/a WVUE-TV 8, on December 23, 1992.

Present:

Dominic J. Gianna, attorney for Burnham Broad-

casting Company, A Limited Partnership, d/b/a WVUE-TV 8

Ronald L.Wilson, attorney for defendants, Timothy D. Williams, Jr., Donnie Williams, and the Christian Church of New Orleans Investigating and Interrogating Body.

After reeviewing the pleadings, and after hearing the evidence, the court, considering the law and the evidence to be in favor of the plaintiff, mover herein:

IT IS ORDERED, ADJUDGED AND DECREED, that plaintiff's Motion for Contempt against Donnie Williams is hereby granted. The Court orders defendant, Donnie Williams to pay a $1,000.00 fine, and further orders defendant, Donnie Williams, to serve 30 days in the Orleans Parish Prison, such sentence to begin on January 4, 1992;

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that plaintiff's Motion for Contempt against The Christian Church of New Orleans Investigating and Interrogating Body is hereby granted. The Court orders defendant, The Christian Church of New Orleans Investigating and Interrogating Body, to pay a fine of $1,000.00 on or before January 4, 1993;

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that an attachment issue for Timothy D. Williams, Jr., that Timothy D. Williams, Jr. be incarcerated in Orleans Parish Prison pending the posting of a $2,500.00 bond, and that defendant, Timothy D. Williams, Jr., appear before this Court on January 4, 1993

at 9:00 a.m.;

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that plaintiff's Motion for Contempt filed against Timothy D. Williams, Jr., be heard on the 4th day of January, 1993 at 9:00 o'clock a.m.

New Orleans, Louisiana this 23rd day of December, 1992.

/s/ Illegible

DISTRICT JUDGE

PLEASE SERVE:

Donnie Williams
2318 Clouet Street
New Orleans, Louisiana

and

3027 N. Tonti Street
New Orleans, Louisiana

and through his attorney of record,
Ronald L. Wilson
837 Gravier St.
New Orleans, Louisiana 70112

The Christian Church of New Orleans Investigating and Interrogating Body
through Pastor Timothy D. Williams and Donnie D. Williams
3027 N. Tonti Street
New Orleans, Louisiana

and

2318 Clouet Street
New Orleans, Louisiana

and through its attorney of record,
Ronald L. Wilson
837 Gravier St.
New Orleans, Louisiana 70112

Timothy D. Williams, Jr.
3027 N. Tonti Street
New Orleans, Louisiana

and

2318 Clouet Street
New Orleans, Louisiana

and through his attorney of record,
Ronald L. Wilson
837 Gravier St.
New Orleans, Louisiana 70112

A TRUE COPY

/s/ Illegible

ILLEGIBLE

APPENDIX C

BURNHAM BROADCASTING COMPANY, A LIMITED PARTNERSHIP D/B/A WVUE-TV 8	*	NO. 93-CA-0409
	*	COURT OF APPEAL
	*	FOURTH CIRCUIT
versus		
	*	STATE OF LOUISIANA
TIMOTHY D. WILLIAMS, JR. ET AL.		

* * * * * *

APPEAL FROM
CIVIL DISTRICT COURT, FOR THE
PARISH OF ORLEANS
NO. 92-10258, DIVISION "C"
HONORABLE RICHARD J. GARVEY, JUDGE

* * * * * *

STEVEN R. PLOTKIN
JUDGE

* * * * * *

(Court composed of Judge William H. Byrnes, III and Judge Charles R. Ward and Judge Steven R. Plotkin)

DOMINIC J. GIANNA
WILLIAM M. BLACKSTON
Middleberg, Riddle & Gianna
201 St. Charles Ave., 31st Floor
New Orleans, LA 70170
FOR PLAINTIFF/APPELLEE

RONALD L. WILSON
837 Gravier St., Suite 310
New Orleans, LA 70112
FOR DEFENDANTS/APPELLANTS

DEC 16 1993

AFFIRMED:

RELIEF DENIED IN WRIT APPLICATION;

STAY LIFTED.

Defendants Timothy D. Williams, Donnie Williams, and The Christian Church of New Orleans Investigating and Interrogating Body (TCCNOIIB)appeal a trial court judgment granting a preliminary injunction prohibiting them from threatening plaintiff, Burnham Broadcasting Co., d/b/a WVUE TV 8, or any of its advertisers, either directly or indirectly. We affirm.

A. *Facts*:

According to the defendants, TCCNOIIB was established by the Christion Church of New Orleans, a non-denominational church, "to investigate and deal with the numerous social issues of today, particularly those of racism and injustice."

The defendants admit that TCCNOIIB threatened WVUE with protests and picketing of advertisers unless WVUE met their demands for free television coverage of their activities which they claim are designed to create public awareness of the problems of racism in the City of New Orleans. When WVUE failed to meet their demands to their satisfaction, the defendants conducted boycotts, some of which caused the advertisers targeted to remove their advertising from the television station. The defendants also admit that WVUE officials met with them on various occasions and that they provided coverage of some events, but insist that WVUE continues in a policy of reporting the news in a partial manner, particularly as it pertains to the black community. Numerous communications between the parties, by way of meetings, telephone conversations, and letters, are documented in the record of this case.

The dispute, the defendants say, stems "from the failure and/or refusal of WVUE to allow TCCNOIIB, through Pastor Williams, to appear on its Newsmaker program to discuss social issues which WVUE, according to Pastor Williams, had covered inadequately in a[n] earlier program." The defendants justify their actions by saying that Pastor Williams is "not requesting time that [is] set aside for paid advertisements; he was merely asking to be included on a program on which WVUE highlights events of concern to viewers within its viewing area."

Burnham Broadcasting claims that it took numerous actions in an attempt to address the concerns expressed by the defendants. However, despite these efforts to appease the defendants, the demands increased, until finally they reached the level of coercion, threats, and extortion, the plaintiff claims. For example, Burnham Broadcasting claims that the defendants demanded coverage of specific events by certain WVUE personnel. Additionally, the plaintiff contends, Pastor Williams sought additional free air time for himself, then sought to control which portions of the message the station aired. When the demands became unreasonable, Burnham Broadcasting claims, the instant suit was filed. In it petition, WVUE alleged, among other things, that TCCNOIIB were "attempting to force WVUE to abrogate its role as a responsible member of the news media to provide balanced news coverage to airworthy events."

Burnham Broadcasting filed a petition for injunctive relief, claiming that TCCNOIIB's activities could be enjoined because the defendants' accusations were illegal, unjust, and defamatory, and their activities were threaten-

ing. Plaintiff claimed that it would suffer irreparable injury unless an injunction was issued.

After hearing the case on affidavits and verified pleadings, the trial judge issued a preliminary injunction, which states as follows:

> YOU ARE COMMANDED, ENJOINTED [sic], PROHIBITED AND RESTRAINED FROM, in the name of the State of Louisiana and of the Civil District Court for the Parish of Orleans,
> (1) threatening, whether directly or indirectly, the plaintiff, or plaintiff's agents, employees or customers, with picketing or public displays of protest if Timothy D. Williams, Jr., Jerry Davis, Jr. and/or The Christian Church of New Orleans Investigating and Interrogating Body (or his, their or its agent(s)) is/are not granted free air time on the plaintiff's television station (WVUE-TV 8), or news coverage on the plaintiff's television station(WVUE-TV 8);
> (2) seeking or extorting from the plaintiff, its agent(s) employee(s) or customer(s) something of value for not picketing or publicly protesting;
> (3) picketing, threatening to picket, protesting or threatening, whether directly or indirectly, any customer of the plaintiff to entice or cause such customer of the plaintiff to cease coducting business with the plaintiff, or demanding or extoring anything of value from such customer in lieu of picketing, threatening to picket or publicly protesting.

In issuing the injunction in this case, the trial judge found in his reasons for judgment that the defendants' conduct constituted extortion, and that the conduct was therefore not subject to First Amendment protection. He found that the plaintiffs had established a prima facie case under both the state and federal extortion statutes and that the defendants' activities were directed at deriving "income," which he defined as "a gain or recurrent benefit usually measured in money that derives from capital or labor." The trial judge recognized the defendants' constitutional right to express their opinions regarding racism and paternalism, but found that they "crossed the line of constitutionally protected First Amendment free speech" when they sought "something of value from a private entity such as WVUE."

B. *Standard for granting preliminary injunction*

La. C.C.P. art. 3601, relative to the grounds for issuance of an injunction, provides, in pertinent part, as follows:

> An injunction shall issue in cases where irreparable injury, loss, or damage may otherwise result to the applicant, or in other cases specifically provided by law. . ..
>
> During the pendency of an action for an injunction the court may issue a temporary restraining order, a preliminary injunction, or both, except in cases where prohibited. . ..

In order to prevail at a hearing for preliminary injunction, the moving party must show two things: (1) that

the injury, loss or damage he will suffer if the injunction is not issued may be irreparable; (2) that he is entitled to the relief sought; and (3) that he will be likely to prevail on the merits of the case. *General Motors Acceptance Corp. v. Daniels,* 377 So.2d 346 (La. 1979); *Franz v. Cormier,* 579 So. 2d 1201 (La. App. 5th Cir. 1991). Only a *prima facie* showing is required; therefore, the petitioner is required to offer less proof than is necessary in an ordinary proceeding for permanent injunction is an interlocutory procedural device designed t preserve the status as it exists between the parties pending trial on the merits, a trial judge has great discretion to grant or deny the relief requested. *Id.*

In filing its appeal in the instant case, the defendants do not allege that Burnham Broadcasting failed to prove that it would suffer irreparable injury if the injunction was not issued. Rather, TCCNOIIB arguments address the second and third prongs of the above test for determining whether a preliminary injunction is appropriate-i.e. whether Burnham Broadcasting is entitled to relief requested and whether Burnham Broadcasting would be likely to prevail on the merits of the case. Specifically, TCCNOIIB makes the following two arguments: (1) that the preliminary injnunction violates their rights under the First Amendment of the United States Constitution, and (2) that the trial court's finding that their activities violated state and federal extortion laws was in error. In keeping with the principle that constitutional issues should be avoided unless the resolution of such issues is necessary to the disposition of the case, *In re Snyder,* 105 S. Ct. 2874, 2880 (1985), we will consider the second issue first.

C. Extortion

In concluding that Burnham Broadcasting was entitled to the relief requested and that it was likely to prevail on the merits, the trial judge found that the plaintiffs had presesnted a *prima facie* case that the defendants' activities violated federal extortion laws, specifically 18 U.S.C. 1962, commonly called the RICO statute. The RICO statute provides, in pertinent part, as follows:

> (b) It shall be unlawful for any person through a pattern of recketeering or through collection of an unlawful debt to acquire or maintain, directly or indirectly, any interest in or control of any enterprise which is engage in, or the activities of which affect, interstate or foreign commerce.
>
> (c) It shall be unlawful for any person employed by or associated with an enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs though a pattern of racketeering activity or collection of unlawful debt.

Although the parties disagree concerning which the of above subsections of RICO the trial court applied to this case, they agree that the elements of cause of action under either subsection are the same. Generally, to establish a *prima facie* case, the plaintiff must show the following:

> (1) the existence of an enterprise; (2) that the enterprise affected interstate commerce; (3) that the defendant was employed by or associated

> with the enterprise; (4) that he participated, either directly or indirectly, in the conduct of the affairs of the enterprise; and (5) that he participated through a pattern of recketeering activity, i.e., through the commission of at least two racketeering acts.

United States v. Kopituk, 690 F. 2d 1289, 1323 (11th Cir. 1982), *cert. denied Turner v. United States,* 103 S. Ct. 2089, *Williams v. United States,* 103 S.Ct. 2090, *Kopituk v. United States,* 103 S. Ct. 3542 (1983).

The defendants claim that the plaintiff failed to establish a prima facie case under this law for two reasons: (1) because the plaintiff failed to shown the defendants' association with an "enterprise," which they define as "an organized profit-seeking venture," and (2) because the plaintiff failed to show the existence of a "pattern of recketeering activities."

1. *Existence of an "enterprise"*

On the first issue, the parties' principle disagreement is centered on whether the RICO statute requires that an "enterprise" have a profit-seeking motive. The defendants claim that TCCNOIIB is not an organized profit-seeking venture, and that they therefore may not be enjoined from their activities under RICO.

In response, Burnham Broadcasting cites numerous federal cases, first to show that the circuit courts are split on the issue of whether the plainfiff in a RICO suit must indeed show the existence of an "economic enterprise" as

opposed to a "non-economic enterprise," and second to show that even those circuits which require a showing of a profit-seeking motive find that requirement satisfied when the plaintiffs establish either that the enterprise itself is profit motivated or that the reacketeering acts are profit motivated. Burnham Boradcasting claims that the better interpretation of the statute, and the one most likely to be adopted by both the fifth circuit and the United States Supreme Court, neither of which has addressed this issue squarely, would not require that Burnham Broadcasting prove that defendants' actions were profit motivated. However, even if a showing of profit motive was required, Burnham Broadcasting argues, it did meet its burden of showing that the defendants' actions were indeed intended to obtain an economic advantage, i.e. free valuable air time.

18 U.S.C. 1961(4) defines an "enterprise" to "include any individual, partnership, corporation, association, or other legal entity, and any union or group of individuals associated in fact although not a legal entity. In order to show an "association-in-fact," a plaintiff must show "evidence of an ongoing organization, formal or informal, and...evidence that the various associates function as a continuing unit." *United States v. Turkette,* 101 S. Ct. 2524, 2528 (1981); *Manax v. McNamara,* 842 F. 2d 808, 811 (5th Cir. 1988). The caselaw interpreting that provision generally requires a showing that an association-in-fact have some purpose beyond the conduct complained about in the case. *See, e.g. Manax,* 842 So. 2d 808, in which the court held that two individuals joined together to commit one discrete criminal act do not constitute an association-in-fact. *Id.* at 811, citing *Montesano v. Seafirst Commercial Corp.* 818 F. 2d 423, 427 (5th Cir. 1987).

In the instant case, the plaintiffs presented sufficient evidence to establish a *prima facie* case that the defendants are indeed an association-in-fact. TCCNOIIB is an organization committed to the pursuit of various social goals, principally the removal of racism and paternalism. In pursuit of those goals, the group has undertaken numerous projects, including the activities against Burnham Broadcasting complained about in the instant case. Thus, Burnham Broadcasting showed "evidence of an ongoing organization, formal or informal, and...evidence that the various associates function as a continuing unit." *Turkett,* 101 S.Ct. at 2528.

The more important problem in determining whether the trial judge correctly found existence of an "enterprise" centers around the "profit motive" isue. The trial judge found specifically that a profit motive was established since TCCNOIIB was seeking to gain "income," which the trial judge defined as "a gain or recurrent benefit usually measured in money that derives from capital or labor, from Burnham Broadcasting. In his reasons for judgment, the trial judge says that the "benefit" sought by the defendants, i.e. free air time, falls within that definition because they seek a recurrent benefit.

We agree with the trial court's conclusion that the benefit sought by TCCNOIIB, free air time, is sufficient to qualify as a profit-seeking motive for purposes of a RICO violation. Thus, it is unnecessary for this court to determine whether a court must find a profit-seeking motive before it can find a RICO violation. Only if no profit-seeking motive was present in this case would determination of whether such a motive is a prerequisite to a

finding that an enterprise existed be important. Thus, we agree witah the trial court's conclusion TCCNOIIB was an enterprise for purposes of a RICO violation.

2. *Existence of a "pattern of recketeering activity"*

On the second issue, the defendants claim that Burnham Broadcasting failed to make a *prima facie* showing the defendants engaged in a "pattern of recketeering activities," as required for a RICO violation. 18 U.S.C. 1961(5) provides, in pertinent part, that a "pattern of racketeering activity' requires at least two acts of racketeering activity...the last of which occurred within ten years...after the commission of a prior act of racketeering activity. Further, 18 U.S.C. 1961(1)(A) defines "racketeering activity" to include the following predicate offenses: "(A) any act or threat involving...extortion..., which is chargable under State law and punishable by imprisonment for more than one year," and "(B) any act which is indictable under...section 1951 (relating to interference with commerce, robbery, or extortion)." The trial judge found that this element was satisfied by the showing that the defendants engaged in picketing WVUE and its customers on various occasions, as well as the showing that threatening letters were mailed to the plaintiff.

The defendants claim that the trial court erred in finding that picketing qualified as racketeering activity. The defendants claim that they did not engage in a "pattern of racketeering activities" becausse they did not 'extort money from anyone, trespass on anyone's property, harass or strike anyone, or commit any crimes of violence," and seeking to distinguish its activities from the activities

in the cases cited by the trial judge in support of his decision. The defendants claim that "racketeering activities" must consist of economic predicate acts, and that a request for free air time is not a predicate act.

Not so, says Burnham Broadcasting, which claims that any act of extortion under federal or state law is a predicate offense under the RICO statute. Burnham Broadcasting claims that the trial court found that TCCNOIIB's activities qualified as extortion under both federal and state law.

Because we find that TCCNOIIB's activites did indeed constitute extortion under federal law, we pretermit any discussion of whether the activities also qualified as extortion under state law. The federal extortion law, codified at 18 U.S.C. 1951, is commonly referred to as "the Hobbs Act." That provision defines "extortion" as follows:

> the obtaining of property from another, with his consent, induced by wrongful use of actual or threatened force, violence or fear, or under color of official right.

Since "extortion" includes activities which tend to exploit the fear of the victim, inducing a party to give up any property right because of fear of economic loss qualifies as extortion. *See United States v. Duhon,* 565 F.2d 345, 350-51 (5th Cir.), *cert. denied Duhon v. United States,*98 S. Ct. 1580 (1978); *United States v. Tropiano,* 418 F. 2d 1069, 1075-76 (2d Cir. 1969), *cert. denied Grasso v. United States,* 90 S. Ct. 1258, *Tropiano v. United States,* 90 S. Ct. 1262 (1970). The term "property," as used in the above defini-

tion, "includes, in a broad sense, any valuable right considered as a source or element of wealth." *Tropiano,* 418 So. 2d at 1075. Further, the "right to pursue a business including the solicitation of customers necessary to the conduct of such business has long been recognized as a property right." *Id.* at 1076. *See also Noartheast Women's Center, Inc. v. McMonagle,* 868 F. 2d 1342, 1350 (3d Cir.), *cert. denied McMonagle v. Northeast Women's Center, Inc.,* 110 S. Ct. 261 (1989).

In the instant case, Burnham Broadcasting showed at least two acts by the defendants designed to coerce Burnham Broadcasting into giving up a valuable property right, i.e. free air time. Burnham Broadcasting showed that the defendants conducted demonstrations and pickets both on or near its property and on or near the property of its advertisers. Additionally, Burnham Broadcasting introduced letters from the defendants designed to achieve the same result. Thus, Burnham Broadcasting made a *prima facie* showing of a "pattern of racketeering activities' on the part of the defendant.

D. *First Amendment*

Because we have concluded tht the preliminary injunction was properly admitted under the federal RICO statute, we must now consider whether the preliminary injunction was nevertheless improper under the First Amendment to the United States Constitution.

The defendants claim that the Constitution protects their activities because the right to engage in nonviolent boycotts and protests is protected by the First Amend-

ment, making the injunction improper. They claim that they were engaged in a secondary boycott and protest designed to increase awareness of "a matter of great social concern, to wit: [Burnham Broadcasting's] unfair and biased news coverage of events and issues relevant to the black community." The defendants again claim that the injunction was improper because it was not designed to advance any economic interests, but social concerns.

Although the defendants correctly cite *NAACP v. Claiborne Hardware Co.*, 102 S. Ct. 3409 (1982) and *Machesky v. Bizzell*, 414 F. 2d 283 (5th Cir. 1969) in support of their proposition that certain types of picketing and demonstrations designed to eliminate segregation and discrimination are protected by the First Amendment, the activities conducted by the defendants in the instant case do not fall into the same category as the activities in the earlier case for one major reason-the activities conducted by the defendants in this case were part and parcel of a criminal act, extortion. *See United States v. Quinn*, 514 So. 2d 1250 (5th Cir. 1975), *cert. denied Quinn v. United States*, 96 S. Ct. 1430 (1976), in which the court found that unlawful threats to picket a commercial establishment to coerce the owner into making a religious contribution were not protected by the First Amendment. Thus, the preliminary injunction issued in the instant case is not improper under the First Amendment to the United States Constitution.

E. *Writ application*

After the issuance of the preliminary injunction, while this case was on appeal, the trial court issued a judg-

ment holding the defendants in contempt of court for violating the preliminary injunction. The defendants sought supervisory writs in this court in aplication #93-C-1113, which we consolidated with this appeal; we also stayed execution of the contempt judgment until resolution of this appeal. We now deny any relief in the writ application and lift the order staying the execution of the contempt judgment.

F. *Conclusion*

Accordingly, the trial court judgment issuing the preliminary injunction against the defendants is affirmed. Additionally, all relief is denied in supervisory writ application #93-C-1113, and the order staying execution of the contempt judgment is lifted.

AFFIRMED:

RELIEF DENIED IN WRIT APPLICATION:

STAY LIFTED.

APPENDIX D

THE SUPREME COURT OF THE STATE OF LOUISIANA

BURNHAM BROADCASTING COMPANY,
A LIMITED PARTNERSHIP, D/B/A WVUE-TV 8

VS. NO. 94-C - 0150

TIMOTHY D. WILLIAMS, JR. ET AL

— — — — —

IN RE: Williams, Donnie; Christian Church/N.O. Inv.Bdy.; - Defendant(s); Applying for Writ of Certiorari and/or Review; Parish of Orleans Civil District Court Div. "C" Number 92-20258; to the Court of Appeal, Fourth Circuit, Number 93CA-0409

— — — — —

February 25, 1994

Denied.

PH

PFC

JLD

JCW

HTL

CDK

ORTIQUE, J., would grant the writ.

MARCUS, J., not on panel.

Supreme Court of Louisiana
February 25, 1994

/s/ Illegible

Clerk of Court
For the Court

(2)

NO. 93-1914

Supreme Court, U.S.
FILED
JUN 24 1994
OFFICE OF THE CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1993

TIMOTHY D. WILLIAMS, JR., ET AL
PETITIONERS

v

BURNHAM BROADCASTING COMPANY,
A LIMITED PARTNERSHIP
d/b/a WVUE-TV 8
RESPONDENT

PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT OF LOUISIANA

OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

DOMINIC J. GIANNA
MIDDLEBERG, RIDDLE & GIANNA
201 St. Charles Avenue, 31st Floor
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COUNSEL FOR RESPONDENT, BURNHAM BROADCASTING COMPANY, A LIMITED PARTNERSHIP d/b/a WVUE TV-8

A B Letter Service, Inc., 327 Chartres St., New Orleans, La. (504) 581-5555

44 pp

QUESTION PRESENTED FOR REVIEW

Contrary to the "Questions Presented" by Petitioners in their Petition for a Writ of Certiorari, this case does not raise any unsettled issues of constitutional law. The only question presented by this Case is whether activities that constitute extortion under state and federal laws can be so mischaracterized as to receive protection from the First Amendment's guarantee of the freedom of speech.

PARTIES TO THE PROCEEDINGS

Petitioners, Timothy D. Williams, Jr., Donnie Williams, and The Christian Church of New Orleans Investigating and Interrogating Body were Defendant-Relators in the proceedings before the Supreme Court of Louisiana.

Respondent, Burnham Broadcasting Company, A Limited Partnership d/b/a WVUE TV-8 was Plaintiff-Respondent in the proceedings before the Supreme Court of Louisiana.

TABLE OF CONTENTS

Page

Questions Presented for Review i

Parties to the Proceedings ii

Table of Contents iii

Table of Authorities v

I. STATEMENT OF THE CASE 1

A. Procedural Background 1

B. Summary of the Facts 1

C. Response to Petitioners' Statement of the Case 3

II. SUMMARY OF ARGUMENT 8

III. ARGUMENT 9

A. Criminal Speech Receives Little or No Constitutional Protection 9

B. The Lower Courts Enjoined Criminal Conduct, Not Beliefs 13

TABLE OF CONTENTS (continued)

Page

C. *R.A.V. v. St. Paul* and *Madsen v. Women's Health Center* 15

D. The Lower Court Holdings are Consistent with *Claiborne Hardware* 17

E. The Injunction is Narrowly Tailored and is Necessary to Present Specific Abuses 19

IV. CONCLUSION 22

TABLE OF AUTHORITIES

CASES **PAGE**

Bigelow v. Virginia, 421 U.S. 809, 95 S.Ct. 2222, 44 L. Ed.2d 600 (1975) 11

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Burnham Broadcasting Co. v. Williams, 629 So.2d 1335 (La.App. 4th Cir., 1992), *writ denied* 632 So.2d 770 (La. 1994) 3

Cantwell v. Connecticut, 310 U.S. 296, 60 S.Ct. 900, 84 L.Ed. 1213 (1940) 9

Carroll v. President and Com'rs of Princess Ann County, 393 U.S. 175, 89 S.Ct. 347, 21 L.Ed.2d 325 (1968) 16,17

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TABLE OF AUTHORITIES (continued)

CASES **PAGE**

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Ligget Company v. Baldridge, 278 U.S. 105, 49 S.Ct. 57, 73 L.Ed. 204 (1928) 21

Lloyd Corp. v. Tanner, 407 U.S. 551, 92 S.Ct. 2219, 33 L.Ed.2d 131 (1972) 10

Machesky v. Bizzell, 414 F.2d 283 (5th Cir. 1969) 17

Madsen v. Women's Health Center, Inc., 627 So.2d 618 (Fla. 1993), *cert. granted* - U.S. -, 114 S.Ct. 907, 127 L.Ed.2d 1215 (argued April 28, 1994) 16,17,22

NAACP v. Claiborne Hardware Company, 458 U.S. 886, 102 S.Ct. 3409, 73 L.Ed.2d 1215 (1982) . . . 9,11,17

National Society of Professional Engineers v. United States, 435 U.S. 679, 98 S.Ct. 1355, 55 L.Ed.2d 637 (1978) 14

New York v. Ferber, 458 U.S. 747, 102 S.Ct. 3348, 73 L.Ed.2d 1113 (1982) 11,12

Northeast Women's Center, Inc. v. McMonagle, 868 F.2d 1342, (3rd Cir.), *cert. denied* 493 U.S. 901, 110 S.Ct. 1515 (1989) 12

TABLE OF AUTHORITIES (continued)

CASES **PAGE**

R.A.V. v. City of St. Paul, - U.S. -, 112 S.Ct. 2538, 120 L.Ed.2d 305 15

Roberts v. United States Jaycees, 468 U.S. 609, 104 S.Ct. 3244, 82 L.Ed.2d 462 (1984) 10,15

Schenck v. United States, 249 U.S. 49, 39 S.Ct. 247, 63 L.Ed. 470 (1919) 9,10,12,15

Spence v. Washington, 418 U.S. 405, 94 S.Ct. 2727, 41 L.Ed.2d 842 (1974) 16

State v. Felton, 339 So.2d 797 (La. 1976) 20,21

Texas v. Johnson, 491 U.S. 397, 109 S.Ct. 2533, 105 L.Ed.2d 342 (1989) 9,14,16

United States v. Hutson, 843 F.2d 1232 (9th Cir. 1988) 21

United States v. Marchetti, 466 F.2d 1309, (4th Cir.) *cert. denied* 409 U.S. 1063, 93 S.Ct. 553 (1972) 12

United States v. Mitchell, 463 F.2d 187, (8th Cir. 1972), *cert. denied* 410 U.S. 969, 93 S.Ct. 1449 (1973) 12

TABLE OF AUTHORITIES (continued)

CASES **PAGE**

United States v. Quinn, 514 F.2d 1250 (5th Cir. 1975), *cert. denied* 424 U.S. 955, 96 S.Ct. 1430 (1976) 11

Wisconsin v. Mitchell, - U.S. -, 113 S.Ct. 2194, 124 L.Ed.2d 436 (1993) 14

STATUTES

LSA-R.S. 14:66 6

18 U.S.C.A. § 1951 21

STATEMENT OF THE CASE

A. Procedural Background

This case comes before this Court on a Petition for Writ of Certiorari filed on behalf of Pastor Timothy D. Williams, Jr., Donnie Williams, The Christian Church of New Orleans, and The Christian Church of New Orleans Investigating and Interrogating Body (collectively referred to as "Petitioners" or "TCCNOIIB"). The case was originally brought by Burnham Broadcasting, a Limited Partnership d/b/a WVUE TV-8 ("Respondent" or "WVUE") to enjoin TCCNOIIB from obtaining free television air time by blackmail. The injunction was affirmed by the Louisiana Fourth Circuit Court of Appeal. The Supreme Court of the State of Louisiana denied Petitioners' writ application to review the decision of the appellate court.

B. Summary of the Facts

The Petitioners had devised a method to extort valuable television air time from New Orleans television stations. They demanded free air time and news coverage. If the broadcast station refused to accede to their demands, they threatened to picket the station and the stations' advertising customers. The Petitioners carried signs calling the target television station and the advertisers "racist" and other vile epithets. They specifically targeted advertisers that cater to minority customers.

WVUE became one of the Petitioners' targets. Petitioners threatened to picket WVUE's advertisers unless the station met their demands for free air time and publici-

ty for Pastor Williams. WVUE attempted to work with and even appease the Petitioners. WVUE's attempts resulted in more demands. TCCNOIIB members eventually picketed WVUE's advertisers, carrying signs accusing WVUE of being "racist" and the advertisers of "racism through neutrality". As a direct result of those pickets, advertisers ceased purchasing air time from WVUE and informed WVUE that the cancellation of business was a result of the picketing. To protect its right to conduct business and remain on the air, WVUE petitioned the state district court to end Petitioners' acts of extortion and blackmail.

The Preliminary Injunction issued by the district court enjoined acts of intimidation, extortion or threats intended to gain air time or anything else of value. The trial court found, as a matter of fact, that TCCNOIIB, led by Pastor Timothy D. Williams, Jr., had perfected a scheme to blackmail television stations into providing free broadcast time and news coverage. The court found that if the demands were not met to the satisfaction of Pastor Williams, Petitioners threatened to, and did picket the stations' advertising customers proclaiming that the business was racist and paternalistic. *See,* Trial Court Reasons for Judgment, Appendix A.

In a decision rendered on December 16, 1993, the Louisiana Court of Appeals for the Fourth Circuit affirmed the granting of the preliminary injunction issued by the trial court, finding that TCCNOIIB's actions constituted a violation of the federal Racketeer Influenced and Corrupt Organizations Act ("RICO"). *Burnham Broadcasting Co. v. Williams,* 629 So.2d 1335 (La.App.4th Cir. 1993). On February 25, 1994, the Louisiana Supreme Court denied

Petitioners' Writ of Certiorari/Review. *Burnham Broadcasting Co. v. Williams,* 629 So.2d 1335 (La.App. 4th Cir. 1993), *writ denied,* 632 So.2d 770 (La. 1994). Petitioners now erroneously allege in their Petition to this Court that the injunction - an injunction that enjoined the extortion of free air time - is unconstitutional under the First Amendment of the United States Constitution.

C. Response to Petitioners' Statement of the Case

Petitioners' Statement of the Case alleges that it was their "intention to get respondent to provide a more balanced coverage of the news, particularly as it relates to the black community." Petitoners' Writ for Certiorari, pg. 3. Petitioners also claim they were motivated out of a desire "to discuss social issues", Petitioners' Writ at 4, and "investigate and deal with . . . racism and injustice." Petitioners' Writ at 2.

Petitioners' claim of purely altruistic goals deserves closer scrutiny. In contrast to this stated policy of combating social ills, facts proven in the trial court reveal that TCCNOIIB's goals were actually to publicize the organization and aggrandize its leader, Timothy D. Williams.[1] A

[1] Petitioners admitted at trial that their goal was to obtain free air time and publicity for Pastor Williams and the group. Petitioners admitted that the air time sought is a thing of value. Additionally, it was proven at the trial court that Pastor Williams and TCCNOIIB profited from their extortionate activities. Bill Watson Ford (a local New Orleans car dealership) paid $5,000.00 in settlement after Pastor Williams alleged that employees of Bill Watson Ford splashed TCCNOIIB protestors with water during a protest in front of the car dealership. The employees were washing cars on the sales lot. It was proven that Pastor Williams personally received $4,500.00 from the car dealership. The "injured" group members received $500.00 to settle their claims. Notably, Pastor Williams and TCCNOIIB agreed in the settlement and release documents to refrain from further picketing of Bill Watson Ford, Inc.

letter written by Pastor Williams and directed to WVUE demonstrates TCCNOIIB's overriding desire to obtain publicity and free television coverage:

> ...it was insensitive, illogical, and very undionetical [sic] for you to refuse to give us restitution, in the sense of more air time...after you promised us that you were going to deal with our Aetna protest regarding the alleged racism against Donnie Williams, we had to wait six months before you coordinated [Warren] Bell to deal with the issue.
>
> We were promised a cemera many times on the Aetna location, but did not receive one. Later, you promised to send a camera crew and no one showed up, because you claim that the Jazz Festival was your obstruction....because the most vital points in which I dealt with concerning wallpaper racism were cut out [of a previously taped report]...you, in return....decided to give me ten minutes of unedited air time on Newsmakers.
>
> ...Through your present racist posture through being neutral, by taking a cold, insensitive position through refusing to restitute us in the situation by giving the additional fifteen minute air time. Because you have taken this staunch unethical position, you have left us with no other choice but to protest against your station and boycott your sponsors.

Letter of Timothy D. Williams to WVUE of 2/26/91, Appendix B.

In its statement of the case, TCCNOIIB also avoided mentioning the inflammatory tactics it employed to take advantage of the societal stigma associated with the label "racist." Group members carried signs denouncing the station and its advertisers as racist and paternalistic toward African-Americans. Petitioners' signs (carried in front of the advertisers' places of business) accuse the advertisers' customers of being "**. . . mentally ill and morally sleep** [sic] **if you shop here.**" TCCNOIIB also accused the station and its advertisers of being "**. . . infected with gonorrhea of racism and the lung cancer of unethical paternalism**". Petitioners never substantiated their charges with facts. Instead, they exploited the station's advertisers' fear of economic loss, thereby gaining the leverage necessary to attain their illegal objective of extorting valuable broadcast time and controlling the station's news coverage.

WVUE attempted to resolve this volatile situation by providing the group with the requested free air time and coverage. Each time, WVUE's efforts were met with dissatisfaction, increased demands and renewed threats. When it became apparent that TCCNOIIB could not be appeased, WVUE ceased attempting to work with the group. In a letter dated October 11, 1992, Pastor Williams admitted that WVUE had in fact cooperated, but renewed his threats anyway:

> In truth, you have made some efforts to balance the scales for Black people concerning racism, but your racist concepts about Black people finally came to the surface, when you said, 'we were being unreasonable, and you didn't feel comfortable working with us.'

* * *

> You have five (5) days to respond to this letter. We shall not boycott you until we finish dealing with a major issue that we are presently dealing with.

Letter of Timothy D. Williams to WVUE of 10/11/92, Appendix C.

Only after efforts to placate the group failed and as the last resort, WVUE filed a Petition for Injunctive Relief on November 25, 1992. After a full contested hearing on the merits, the trial court issued a Preliminary Injunction enjoining Petitioners from threatening, whether directly or indirectly, WVUE and WVUE's advertisers. The trial court found that WVUE had established the requisite prima facie case of extortion.[2] The injunction was issued on December 11, 1992 and served on December 13, 1992.

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[2] "Property" under the Federal Extortion Act (28 U.S.C. § 1951) "includes, in a broad sense, any valuable right considered as a source or an element of wealth," including "a right to solicit business." *United States v. Tropiano,* 418 F.2d 1069, 1075-76 (2nd Cir. 1969), *cert. denied* 397 U.S. 1021, 90 S.Ct. 1262 (1970). In addition, fear of economic harm satisfies the requirement that a defendant induced property from another for wrongful use of fear. *See, e.g., U.S. v. Jacobs,* 451 F.2d 530 (5th Cir.), *cert. denied* 405 U.S. 955, 92 S.Ct. 1170 (1972); *U.S. v. Duhon,* 565 F.2d 345 (5th Cir.) *cert. denied* 435 U.S. 952, 98 S.Ct. 1580 (1978).

Louisiana's extortion statute, LSA-R.S. 14:66 states in pertinent part, "extortion is the communication of threats to another with the intention thereby to obtain anything of value or any acquittance, advantage or immunity of any description." LSA-R.S. 14:2(2) defines "anything of value" to include any conceivable thing of the slightest value, movable or immovable, corporeal or incorporeal, public or private, including transportation, telephone and telegraph service, or any other service for hire. *See also State v. Moore,* 419 So.2d 963, 967 (La. 1982)(even sexual favors are a thing of value within the meaning of the extortion statute).

Despite the injunction, on the very next day, December 14, 1992, TCCNOIIB picketed an advertiser of WVUE using the same words, phrases and threats as before. As a consequence, WVUE moved to find Petitioners in contempt of court. At the contempt trial, WVUE proved that the Petitioners used tactics identical to their earlier boycotts to threaten and intimidate the advertisers.[3] The trial court found that TCCNOIIB and Donnie Williams willfully disobeyed the court's injunction and were adjudged in contempt of court. (Timothy Williams failed to appear in court for the contempt hearing).

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[3] Contrary to the allegation of Petitioners in their Petition for Writ, evidence was presented at the contempt hearing of the relationship between the decision of an advertiser to resume advertising on WVUE and TCCNOIIB's renewed protest. WVUE submitted into evidence a taped message to the advertiser left by Petitioner, Donnie Williams and video tape of pickets. WVUE also presented a number of fact witnesses who testified that they were indeed threatened by the group, had cancelled advertising on WVUE, resumed advertising after the injunction was issued — but then received renewed threats after the issuance of the injunction — and, as a consequence of the threats and intimidation, cancelled or were considering cancelling their advertising on WVUE.

II. SUMMARY OF ARGUMENT

This case concerns nothing more than the propriety of an injunction that prohibits extortion and blackmail. It presents this Court with no unsettled question of constitutional law.

Petitioners' Statement of the Facts stretches the facts in an attempt to raise a First Amendment issue that does not exist. Their assertion that their actions were driven by a goal to remedy societal ills is belied by the proven fact that their real purpose was to publicize their group, aggrandize its leader and profit from their threats. (It was proven that the group and its leader profited to the tune of $5,000.00 by using their methods against one of WVUE's advertisers. *See, supra* pg.3, n.1). Based upon their misleading assertions, Petitioners make analogies to cases that involve legitimate First Amendment concerns. However, those cases are factually dissimilar and legally inapposite.

Petitioners have also failed to explain why this case presents any issue of general importance ripe for Supreme Court review. The mere allegation that the injunction is overbroad and content based is not enough. Petitioners fail to offer any support for their conclusory allegations and ignore a basic tenet of First Amendment law: speech which constitutes a crime does not receive First Amendment protection.

Petitioners' plea for First Amendment protection in this case is akin to requesting protection for the shout of "fire" in a crowded theater. *Schenck v. United States,* 249

U.S. 49, 39 S.Ct. 247, 63 L.Ed. 470 (1919). In the seventy-five years which have passed since the *Schenck* decision, this Court has consistently held that the First Amendment affords no protection for threats, violence, extortion or other forms of speech that have little or no value to society. It is not necessary for this Court to reconsider such black letter law.

III. ARGUMENT

A. Criminal Speech Receives Little or No Constitutional Protection

The First Amendment guarantees Americans the right to engage in speech or conduct intended to convey ideas. *See, e.g., Cantwell v. Connecticut,* 310 U.S. 296, 309-11, 60 S.Ct. 900, 905-06, 84 L.Ed.1213 (1940); *Texas v. Johnson,* 491 U.S. 397, 406, 109 S.Ct. 2533, 2540, 105 L.Ed.2d 342 (1989). Indeed, social and political change effectuated through *legal* expression has always received the highest constitutional protection. *NAACP v. Claiborne Hardware Company,* 458 U.S. 886, 913, 102 S.Ct. 3409, 3425, 73 L.Ed.2d 1215 (1982). Nevertheless, every utterance is not speech. *Chaplinsky v. New Hampshire,* 315 U.S. 568, 62 S.Ct. 766, 86 L.Ed. 1031 (1942). *Chaplinsky* teaches that: "There are certain well-defined and narrowly limited classes of speech, the prevention and punishment of which have never been thought to raise any Constitutional problem. . ." *Chaplinsky,* 315 U.S. at 571-72, 62 S.Ct. at 769.

Chaplinsky dealt with "fighting words," speech directed against an individual intended to provoke violence

or to inflict injury. *Chaplinsky,* 315 U.S. at 572, 62 S.Ct. at 769. "Fighting words" so lack the values the First Amendment was designed to protect that this Court has held that the Constitution affords no protection to the expression. Similarly, this Court has also found that violence or other types of "potentially expressive activities that produce special harms distinct from their communicative impact . . . are entitled to no constitutional protection." *Roberts v. United States Jaycees,* 468 U.S. 609, 628, 104 S.Ct. 3244, 3255, 82 L.Ed.2d 462 (1984).

Like "fighting words," speech and its expressive components designed and intended to resort in illegal or criminal activity is not protected by the First Amendment." *Giboney v. Empire Storage and Ice Company,* 336 U.S. 490, 502, 69 S.Ct. 684, 691, 92 L.Ed. 834 (1949) (holding that an injunction to enjoin the violation of state law is constitutional because the First Amendment does not extend to speech used as an integral part of criminal conduct). *See also Schenck,* 249 U.S. at 52, 39 S.Ct. at 249 (1919) (one who falsely shouts "fire" in a crowded theater may not claim the protection of the First Amendment); *Lloyd Corp. v. Tanner,* 407 U.S. 551, 566-67, 92 S.Ct. 2219, 2227-28, 33 L.Ed.2d 131 (1972) (trespass may be prohibited even when it amounts to a powerful, expressive vehicle); *Claiborne Hardware,* 458 U.S. at 895, 102 S.Ct. at 3425 (violence does not warrant constitutional protection even if part of a traditionally protected activity such as protests or pickets).

While the conduct in each of the cases above may have contained some expressive political content, this Court has long felt that "the evil to be restricted so over-

whelmingly outweighs the expressive interest, if any, at stake, that no process of case-by-case adjudication is required." *New York v. Ferber,* 458 U.S. 747, 763-64, 102 S.Ct. 3348, 3358-59, 73 L.Ed.2d 1113 (1982); *Bigelow v. Virginia,* 421 U.S. 809, 819, 95 S.Ct. 2222, 2231, 44 L.Ed.2d 600 (1975).

In the instant case, both the trial and appellate courts found that Petitioners' purpose and intent was to extort valuable air time. Nevertheless, Petitioners now seek to cloak this extortionate activity with the First Amendment. Petitioners ask this Court to reexamine well-established rules of First Amendment law but, at the same time, ignore the lack of any true expressive content in their activity. Cases like *Chaplinsky, Claiborne Hardware,* and *Ferber* hold that speech does not receive constitutional protection when it is an integral part of a criminal act and lacks communicative value. Petitioners' conduct in this case is precisely the type of speech denied protection by these cases.

This court has repeatedly refused to grant certiorari in cases where a defendant seeks to legitimize extortion by invoking the First Amendment. For example, in *United States v. Quinn,* 514 F.2d 1250 (5th Cir. 1975), *cert. denied* 424 U.S. 955, 96 S.Ct. 1430 (1976), a case very similar to the present, the defendant claimed the First Amendment shielded from prosecution his extortionate threats to protest and picket. The defendant, a reverend and civil rights activist, had attempted to extort money from a business in exchange for calling off protests alleging racism. The trial court convicted the defendant of extortion. On appeal, the U.S. Fifth Circuit affirmed, stating:

> "It may categorically be stated that extortionate speech has no more constitutional protection than that uttered by a robber while ordering his victim to hand over the money, which is no protection at all. As the Fourth Circuit succinctly stated in *United States v. Marchetti*, 466 F.2d 1309, 1314 (4th Cir. 1972) [*cert. denied* 409 U.S. 1063, 93 S.Ct. 553 (1972)], "Threats and bribes are not protected simply because they are written or spoken; extortion is a crime although it is verbal."

Quinn, 514 F.2d at 1268.

As *Quinn* demonstrates, this Court has consistently refused to grant certiorari in cases holding that speech receives no First Amendment protection when it is an element of extortion. *See also United States v. Mitchell*, 463 F.2d 187, 191-92 (8th Cir. 1972). (". . . it is immaterial in this respect that Mitchell may have engaged in protected speech activity, for such activity could not have sanctified his extortionate threats") *cert. denied* 410 U.S. 969, 93 S.Ct. 1449 (1973); *Northeast Women's Center, Inc. v. McMonagle*, 868 F.2d 1342, 1348 (3rd Cir. 1989), (" 'civil disobedience' does not thereby immunize [defendants] from statutes prescribing the very acts the jury found Defendants committed."), *cert. denied* 493 U.S. 901, 110 S.Ct. 1515 (1989)

Petitioners fail to present any reason, much less any compelling reason, why this Court should deviate from its long-practiced policy in cases involving extortion. Petitioners' proven acts fall squarely in the category of unprotected speech found in *Giboney, Schenck, Ferber* and in

the numerous other cases withholding First Amendment protection for criminal speech.

B. The Lower Courts Enjoined Criminal Conduct, Not Beliefs

Petitioners baldly allege in their Petition for Writ of Certiorari that, "The injunction in the case at bar restricts not only when, where and how petitioners may speak, but, also, what petitioners may say. The injunction permits only those protests and boycotts by petitioners to 'seek redress of grievances from government to enact laws or policies against racism and paternalism.'" Petitioners' Writ at 19.

Petitioners' allegations are not supported by the plain language of the injunction. The injunction is only directed at preventing the harmful effects of Petitioners' conduct and only prohibits extortionate activity. The injunction leaves the content of Petitioners' speech unregulated. The injunction is carefully worded to enjoin only pickets, protests, and speech that threaten economic harm unless free air time is provided. No restrictions are placed on Petitioners' motives, thoughts, expressions or ideology. TCCNOIIB is free to picket WVUE and its advertisers and may continue to allege "racism and paternalism" or any other ugly untruth.[4]

This Court has condoned restrictions on harmful *con-*

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[4] Paragraphs one and two of the injunction prevents Petitioners from extorting air time from WVUE by picketing WVUE's advertising customers. Paragraph three of the injunction enjoins Petitioners from picketing WVUE's advertisers in order to entice the advertiser to stop advertising on WVUE (i.e., carrying out the extortionate threats made in the letters incorporated as Appendix B and C).

duct even when it otherwise constitutes speech. *See, e.g., Wisconsin v. Mitchell*, -U.S.-, 113 S.Ct. 2194, 124 L.Ed.2d 436 (1993). *Wisconsin* states that the First Amendment prohibits a state actor from restricting abstract beliefs, but it does not prohibit regulation of specific harm motivated by those abstract beliefs. *Wisconsin*, 113 S.Ct. at 2200-01. The distinction between expressive speech protected by First Amendment and unprotected, harmful conduct was also recognized in *Texas v. Johnson*, 491 U.S. 397, 405, 109 S.Ct. 2533, 2540, 105 L.Ed.2d 342 (1989) (holding that all protests and boycotts do not share the same cherished expressive quality and; therefore, the context of the speech must be considered). Finally, this Court has never hesitated to empower trial courts with authority to "fashion appropriate restraints on [a defendant's] future activities both to avoid a recurrence of the violation and to eliminate its consequences." *National Society of Professional Engineers v. United States*, 435 U.S. 679, 697, 98 S.Ct. 1355, 1368, 55 L.Ed.2d 637 (1978) (holding that an injunction may restrict speech when necessary to curtail the violation of a law). *See also Hirsh v. City of Atlanta*, 495 U.S. 927, 110 S.Ct. 2163, 109 L.Ed.2d 493 (1990) (denial of stay) (Stephens, J., concurring) ("Enjoining criminal speech is permitted when the persons to be enjoined have demonstrated that they are likely to violate the law.").

The trial court responded reasonably and properly to Petitioners' criminal acts of extortion and blackmail. Review of the injunction on First Amendment grounds is therefore unwarranted and would fill no gaps in this Court's jurisprudence.

C. *R.A.V. v. St. Paul* and *Madsen v. Women's Health Center*

R.A.V. v. City of St. Paul, - U.S. -, 112 S.Ct. 2538, 120 L.Ed. 2d 305 (1992) provides the latest pronouncement of the constitutional deference afforded criminal or other traditionally unprotected speech. In *R.A.V.*, this Court reaffirmed the notion that certain speech can, "consistently with the First Amendment, be regulated *because of* [its] *constitutionally proscribable content* (obscenity, defamation, etc.)," *R.A.V.*, -U.S. -, 112 S.Ct. at 2543, [emphasis in original], as long as the *government* actor does "not regulate use based on hostility - or favoritism - towards the underlying message expressed." *R.A.V.*, - U.S. -, 112 S.Ct. at 2545.

To demonstrate the proper analytical approach, the court posed several hypothetical restrictions on "proscribable speech." The court stated that libel can be barred, but only if the bar is content neutral. For example, a ban on only libel critical of the government, would discriminate on the basis of content and would be constitutionally infirm. Conversely, a total ban on otherwise proscribable speech, such as child pornography, would not suppress "a particular literary theme." *R.A.V.*, - U.S. -, 112 S.Ct. at 2543.

R.A.V. grapples with the degree of protection afforded non-traditional methods of communication such as pornography and hate speech. This Court did not discuss more blatant forms of unprotected speech such as screaming "fire" in a crowded theater (*Schenck v. United States*) or simple robbery (the example from *United States v.*

Quinn). In the past, this Court has found these and similar crimes meritless and not "imbued with elements of communication" necessary to implicate the First Amendment. *Spence v. Washington*, 418 U.S. 405, 409, 94 S.Ct. 2727, 2730, 41 L.Ed.2d 842 (1974); *Texas v. Johnson*, 491 U.S. 397, 406, 109 S.Ct. 2533, 2540, 105 L.Ed.2d 342 (1989); *Roberts v. United States Jaycees*, 468 U.S. 609, 628, 104 S.Ct. 3244, 3255, 82 L.Ed.2d 462 (1984).

The injunction in the present case easily passes the stringent standard established in *R.A.V.* The injunction only restricts the criminal conduct Petitioners employed in their attempts to gain free air time. In keeping with the rule of law pronounced in *R.A.V.*, the injunction does not bar pickets or protests suggesting that WVUE is racist, or any other disfavored conduct TCCNOIIB wishes to allege. Instead, the injunction only bars Petitioners' extortionate conduct. The injunction is also well supported by society's interest in discouraging blackmail.

The recent case of *Madsen v. Women's Health Center, Inc.*, 627 So.2d 618 (Fla. 1993), *cert. granted*, - U.S. -, 114 S.Ct. 907, 127 (1994) (argued April 28, 1994), is the most appropriate vehicle for fleshing out this Court's pronouncement of the law on the issues that Petitioners allege are present in the instant case.[5] *Madsen* involved an

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[5] Although not discussed by Petitioners in their Petition for Writ of Certiorari, this case, like *Madsen*, involves an injunction as the means of restraining speech. *Madsen*, therefore, presents this Court with the opportunity to clearly set forth the proper standard to employ in cases involving injunctions which enjoin speech.

Additionally, this case is factually distinguishable from *Carroll v. President and Com'rs of Princess Anne County*, 393 U.S. 175, 89 S.Ct.

injunction which restricted protests at an abortion clinic. In contrast to this case, the protesters in Madsen did not seek to extort anything of value. Also, unlike TCCNOIIB, the protesters in *Madsen* largely resorted to lawful tactics in order to bring about their desired end.

The present case is distinguishable from *Madsen* because it raises no unique or unsettled questions of constitutional law. The injunction in this case only bars the particulary insidious form of extortion petitioners have utilized against Respondent. Granting certiorari in this superficially similar case would only serve to weaken the ruling in *Madsen* and therefore should be avoided.

D. The Lower Court Holdings are Consistent with *Claiborne Hardware.*

TCCNOIIB places great reliance on *NAACP v. Claiborne Hardware,* 458 U.S. 886, 102 S.Ct. 3409, 73 L.Ed.2d 1215 (1982). Petitioners also rely on *Machesky v. Bizzell,* 414 F.2d 283 (5th Cir. 1969), a case similar to *Claiborne Hardware,* both in facts and outcome. *Claiborne Hardware* involved a consumer boycott of the white

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footnote 5 continued

347, 21 L.Ed.2d 325 (1968) and other cases holding that injunctions affecting First Amendment rights "must be couched in the narrowest terms that will accomplish . . . the essential needs of the public order." *Carroll,* 393 U.S. at 183, 89 S.Ct. at 353. Unlike *Carroll,* the injunction in this case was not obtained by Respondents in an *ex parte* hearing. Petitioners were permitted the opportunity to present evidence and plead their case before the trial court. Respondent maintains however, that the injunction in the instant case passes constitutional muster even under the heightened requirements of *Carroll.*

merchants of Claiborne County, Mississippi. The object of the boycotts was to compel the merchants to support demands for racial justice presented to county officials. The Mississippi Supreme Court held the entire boycott tortious and enjoinable since some of the boycotters had purportedly used "force, violence, and threats" against other consumers. The United States Supreme Court unanimously reversed the Mississippi Supreme Court, stressing that the record showed only "isolated acts of violence." *Claiborne Hardware*, 458 U.S. at 923, 102 S.Ct. at 3431.

TCCNOIIB's attempts to analogize the facts of this case to *Claiborne Hardware* and thereby shield itself with the First Amendment are misleading. Any serious comparison between this case and *Claiborne Hardware* reveals their dissimilarities. The *Claiborne Hardware* boycott occurred at the height of the civil rights movement and was part of the NAACP's efforts across the south to overcome a century of segregation and unfair treatment. The NAACP boycott was designed solely to vindicate rights and achieve equality. *Claiborne Hardware* 458 U.S. at 915, 102 S.Ct. at 3426. The NAACP was anything but a group seeking self-aggrandizement.

In contrast, Pastor Williams and TCCNOIIB exclusively advance their own policy of self-promotion by extorting free air time using threats and intimidation. Unlike the *Claiborne Hardware* protests, the facts proven in the lower courts establish that these Petitioners do not seek to establish racial equality, but instead seek profit, publicity, and personal gain. TCCNOIIB has failed to advance a single supportable claim of racism or injustice perpetrated by WVUE.

The distinction between the political nature of the protected speech in *Claiborne Hardware* and the Petitioners' economically motivated activities is obvious. It is clear that political speech of any kind is highly protected by the Constitution. Speech intended to bring about profit, publicity or personal gain is not. In this case, the trial court enjoined only the self-serving extortionate activities traditionally denied constitutional protection—not the political discourse on which our country is founded. The injunction issued in this case is consistent with the holding of *Claiborne Hardware* and does not warrant constitutional review by this Court.

E. The Injunction is Narrowly Tailored and is Necessary to Prevent Specific Abuses

Petitioners allege that the injunction is overbroad and will "effectively outlaw the protests and boycotts found constitutionally protected by the court in *Machesky* and *NAACP v. Claiborne Hardware.*" Petitioners' Writ at 18. Petitioners vaguely warn that the injunction will "gut the essential protection of the First Amendment." Petitoners' Writ at 18. Petitioners, however, fail to present this Court with any specific explanation of why the injunction is overbroad.

The "overbreadth" doctrine is not applicable in this case. The doctrine permits a person to make a facial challenge to a statute which restricts speech even if the speaker has engaged in activity that could be regulated under a more narrowly tailored statute. *See, e.g., Broadrick v. Oklahoma*, 413 U.S. 601, 612-13, 93 S.Ct. 2908, 2916-17 L.Ed.2d 830 (1973). Overbreadth, therefore, permits some-

one engaging in activity falling outside the bounds of the Constitution to challenge a statute on behalf of persons whose constitutionally permissible activity potentially could be restricted by that statute. The doctrine is based on the fear that a broadly written statute may inhibit the protected speech of innocent third parties and result in a chilling effect on the First Amendment. *See Thornhill v. Alabama*, 310 U.S. 88, 60 S.Ct. 736, 84 L.Ed. 1093 (1940).

Petitioners' unsupported allegation that the injunction overreaches constitutional boundaries is specious. The injuncion is narrowly tailored and targets only the exact source of "the 'evil' it seeks to remedy." *Frisby v. Schultz*, 487 U.S. 474, 485, 108 S.Ct. 2495, 2503, 101 L.Ed.2d 420 (1988); *City Counsel of Los Angeles v. Taxpayers for Vincent*, 466 U.S. 789, 808, 104 S.Ct. 2118, 2130, 80 L.Ed.2d 772 (1984).The injunction does not enjoin any activity which is otherwise legal under the state and federal extortion statutes. In tailoring the injunction, the trial court properly enjoined only Petitioners' criminal acts and leaves the rights of the public at large undisturbed.

Assuming *arguendo* that Petitioners challenge the underlying statues in this case, this argument must too fail. Courts have found that both the federal and Louisiana extortion statutes do not facially infringe on the constitutional right of free speech.[6] Additionally, this Court has

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[6] In *State v. Felton*, 339 So.2d 797, 800 (La. 1976), the Louisiana Supreme Court held that LSA-R.S. 14:66 (i.e., the Louisiana extortion statute) does not inhibit constitutionally protected areas of expression and instead only prohibits the use of threats intended to cause the victim to part with property. *Felton*, 339 So.2d at 800.

held that a statute will not be found overbroad if it is capable of interpretation consistent with the Constitution. This Court has consistently held that, because the overbreadth analysis is "strong medicine," *Broadrick v. Oklahoma*, 413 U.S. 601, 613, 93 S.Ct. 2908, 2916, 37 L.Ed.2d 830 (1973), it may be invoked only when the overbreadth is not only "real, but substantial as well." *Broadrick v. Oklahoma*, 413 U.S. at 615, 93 S.Ct. at 2918. *Broadrick* further states that the overbreadth doctrine "has been employed by the Court sparingly and only as a last resort. Facial overbreadth has not been invoked when a limiting construction has been or could be placed on the challenged statute." *Broadrick*, 413 U.S. at 613, 93 S.Ct. at 2916. The extortion statutes in the instant case are limited only to criminal activity. Their constitutionality should not be questioned.

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footnote 6 continued

The federal extortion statute, 18 U.S.C. §1951, was upheld in *U.S. v. Hutson*:

> Because the statute in the present case is limited to extortionate threats, it does not regulate speech relating to social or political conflict, where threats to engage in behavior that may be unlawful may nevertheless be part of the market place of ideas. [citations omitted]. The "intent to extort" requirement of section 876 guarantees that the statute reaches only extortionate speech, which is undoubtedly within the government's power to prohibit.

United States v. Hutson, 843 F.2d 1232, 1235 (9th Cir. 1988).

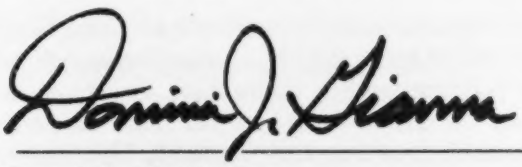
In *Hutson*, *Felton* and numerous other cases, courts have consistently held that prosecuting or enjoining extortion does not intrude on the First Amendment. Indeed, a prohibition on extortion preserves many fundamental rights such as the right to own and be compensated for property recognized in the Fifth and Fourteenth Amendments. *See Ligget Company v. Baldridge*, 278 U.S. 105, 49 S.Ct. 57, 73 L.Ed. 204 (1928) (holding that the right to pursue a lawful business including the solicitation of customers necessary to the conduct of such business has long been recognized as a property right). Petitioners apparently do not challenge the constitutionality of the Louisiana or federal extortion statute.

IV. CONCLUSION

Petitioners have not stated a valid case for this Court to grant the requested writ of certiorari. Rule 10 of the United States Supreme Court Rules sets forth the considerations which govern when review on a writ of certiorari will be granted. Petitioners have failed to establish that any of the considerations exist in the present case. Furthermore, this Court has frequently denied certiorari in cases identical to the case Petitioners now attempt to put before this Court. Finally, *Madsen v. Women's Health Center* provides the vehicle for this Court to decide the free speech issues that Petitioners erroneously claim arise in this case.

For the foregoing reasons, Respondent respectfully requests that the Petition for Writ of Certiorari be denied.

Respectfully submitted,



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ATTORNEYS FOR RESPONDENT
BURNHAM BROADCASTING COMPANY, A LIMITED PARTNERSHIP
d/b/a WVUE TV-8

APPENDIX A

CIVIL DISTRICT COURT

PARISH OF ORLEANS

STATE OF LOUISIANA

NO. 92-20258 DIVISION "C"

BURNHAM BROADCASTING d/b/a WVUE-TV 8

versus

TIMOTHY WILLIAMS, ET AL.

REASONS

Plaintiff, Burnham Broadcasting Company, A Lim ited Partnership, d/b/a WVUE-TV 8 ("WVUE"), an F.C.C. licensed entity located in New Orleans which is within 40 miles of the border of the State of Mississippi, seeks injunctive relief, alleging that defendants, Timothy Williams, Jr., Jerry Davis, Jr., and The Christian Church of New Orleans Investigating and Interrogatory Body have coerced, threatened, and extorted WVUE to provide free air time and television coverage of the activities and opinions of their organization, that the extortion threats have continued despite attempts to comply with television coverage, and that the defendants have picketed and threatened plaintiff's advertisers in order to force plaintiff's compliance with the demand.

Defendants oppose the injunction, arguing that their

boycott and picketing of the plaintiff and its advertisers is protected activity under the First Amendment.

Defendants reliance on N.A.A.C.P. v. Claiborne Hardware Co., 458 U.S. 913, 102 S.Ct. 3409 (1982), is in part misplaced. That case held only that boycott activity possessing lawful aims and goals is protected by the First Amendment. Moreover, *N.A.A.C.P.* speaks to a secondary boycott to induce government action. In the case at bar, a tertiary boycott is involved with the specific intent to extort "income" from the plaintiff.

Although, research reveals no cases directly on point, "[i]t may categorically be stated that extortionate speech has no more constitutional protection than that uttered by a robber while ordering his victim to hand over money, which has no protection at all." *U.S. v. Hutson*, 843 F.2d 1232, 1235 (9th Cir. 1988). The issue for purposes of the First Amendment is not whether the statements are uttered in public or private, but rather whether the speech in question can fairly be characterized as extortion. See *McCalden v. California Library Ass'n.*, 955 F.2d 1214, 1229 (9th Cir. 1990). The defendants's[sic] public activity appears on the surface to be within the protection of the First Amendment; however, when viewed in conjunction with the letters attempting to obtain from the plaintiff free air time or coverage of the defendant's activities, the First Amendment protection is lost.

In support of their complaint, plaintiff presents two letters written by the defendants demanding compliance with their demand for television coverage within 3 days. Plaintiff argues that, as such, the defendants have violated

RICO, 18 U.S.C. 1962, which prohibits the control of any enterprise affecting interstate activity through a pattern of racketeering. The demand of television coverage on an FCC entity which broadcasts across state lines constitutes an activity affecting interstate commerce and the letters demanding free air time to proffer their views and activites[sic] are extortionary in nature, constituting the requisite 2 predicate acts. This in the Court's view constitutes an economic benefit to the defendants. See, *National Organization of Women v. Scheidler,* 968 F. 2d 612, 626-30 (7 Cir. 1992). Viewed in terms of the value of the free air time coverage, the defendants' demand is economically motivated.

A preliminary injunction requires that the plaintiff show irreparable injury. C.C.P. Art. 3601. Only the plaintiff is obligated to make a prima facia showing. And pursuant to C.C.P. Art. 3609, the Court heard this matter on affidavits and the verified pleadings. Stipulations were entered of record and no material question of fact exists about what has happened and what the defendants have done. In the court's view, a prima facia showing has been made and irreparable injury shown.

The plaintiff has shown a prima facia case of violations of the federal extortion statute, R.S. 14:66 and the federal mail fraud statutes. Although R.S. 14:47 may have been violated, the court believes that such statute is constitutionally impaired. Under 18 USC 1962 and the definitions in 18 USC 1961, a prima facia showing for the issuance of an injunction under federal law is shown. Only recently did federal law permit state courts to entertain violations of 18 USC 1962.

Webster's Ninth New Collegiate Dictionary defines "income" as "a gain or recurrent benefit usually measured in money that derives from capital or labor." Thus, the benefit sought by the defendants comes within the meaning of income for they seek a recurrent benefit.

A pattern of activity is shown by the defendants picketing WVUE and customers of WVUE, e.g., Bill Watson Ford, Universal Furniture, Hurwitz-Mintz, and others on several occasions. The letters of 26 February 1991 and 11 October 1992 mailed in the United States mail to the plaintiff are part of the pattern of activity.

The Court finds the cases of *Jund v. Town of Hempstead*, 941 F. 2d 1271 (2 Cir. 1991), *Northeast Women's Center, Inc. v. McMonagle*, 868 F. 2d 1342 (3 Cir. 1989), *U.S. v. Dickens*, 695 F.2d 765 (3 Cir. 1982) and *U.S. v. Mitchell*, 463 F. 2d 187 (8 Cir. 1972), support the position of plaintiff and the issuance of a preliminary injunction.

The defendants's right to express their opinions regarding racism and paternalism are constitutionally protected. They have the right to express their opinions freely. But when their conduct seeks something of value from a private entity such as WVUE, they cross the line of constitutionally protected First Amendment free speech.

For these reasons, and others, the Court will issue a preliminary injunction upon the posting of a bond

restraining portions of defendants's activity.

/s/ Max N. Tobias, Jr

JUDGE

11 December 1992.

A TRUE COPY

/s/ C. Crumfox

Deputy Clerk, Civil District Court
Parish of Orleans
State of LA.

APPENDIX B

February 26, 1991

EXHIBIT
B

Mr. Kevin Brenan
WVUE Channel 8
1025 South Jefferson Davis Pkwy.
New Orleans, LA 70125

Greetings Mr. Kevin Brenan,

I am fully aware of the immensified amount of onus responsibilities embodied and contained in your venerating endeavors as news director of WVUE Channel 8.

Nevertheless, the basic purpose of this letter is to binatingly disclose my extensive, deplorable grief toward your ultimate handling of the gravitous issues of racism and paternalism, and our congruent decision to protest against channel 8, and to start a local and national boycott against your advertising sponsors.

In truth, Mr. Brenan, it was insensitive, illogical, and very undianoetical for you to refuse to give us restitution, in the sense of more air time to disclose the issues of racism and paternalism by claiming that we are taking this position because of one mistake you made, when you know that it is now approximately the 9th month regarding your commitment to fair journalism, by giving equalitous coverage to the black community concerning racial issues. And yet, you have the insensatable, insolent audacity to say, "because I made this one mistake you are taking this position."

For the purpose of equilibrium and the avoidance of disequilibration, I remind you Mr. Brenan, that we have demonstrated the highest levels of patience, temperance, endurance, unintractableness, understanding, and immensified dignity. This was valified by the unoscillating fact that it took six months before you really nailed Warren Bell down to deal with the alleged racism of Aetna Insurance Company, concatenated with the many broken promises as we waited patiently for you to deal with the Aetna protest. *Example*: The protest against Aetna is now approximately one year old. Irrevocably, it shall be officially a year old in March of this year, but nevertheless; after you promised us that you were going to deal with our Aetna protest regarding the alleged racism against Donny Williams, we had to wait six months before you coordinated Bell to deal with the issue. We were promised a camera many times on the Aetna location, but did not receive one. When the Adolp Archie situation took place, you told us that you couldn't get a camera out because of the police officer who had been shot. We demonstrated patience and compassionate restraint because of the officer who lost his life. Later, you promised to send a camera crew and no one showed up, because you claimed that the Jazz Festival was your obstruction. And therefore, the racial issue was put on the back burner.

I and my organization again exercised unambiguous stability and restraint even though we knew that it was not proper to put the Jazz Festival before the seriousness of racism and paternalism, because we wanted to give you a chance to prove your commitment to the community. Again, the issue had to be put off because Warren acknowledged that he could not get a camera to come to the

location because I think Travis had taken the camera crew, or had sent the camera crew to Baton Rouge to do a story. Untautologingly we exercised immutable forbearance after waiting six whole months for you to deliver. Finally, you admonished Warren to go on with the special report, and when it was disclosed it was done inadequately, because the most vital points in which I dealt with concerning wallpaper racism were cut out, because Warren said those tapes were damaged. He confirmed that the tapes were not sabotaged. You, in return, approximately within seven months, decided to give me 10 minutes of unedited air time on Newsmakers. It took a number of weeks for me to come and do the taping after we waited for 7 months. And after the taping was done we had to wait an additional three weeks before you said it would air, in addition to the fact you said that even though the taping had to be put off until after Mardi Gras after we had now waited for 8 months.

In conclusion, you said we had to wait three weeks after the taping before it could even air on Newsmakers. And yet, with unlibrating unastaticness, we exercised temperance and much patience. And then, when the third week arrived you forgot that every forth Sunday that your UNO program is supposed to air. And therefore, we experienced another broken promise because Newsmakers was abrogated the Sunday in which you told us that it would be disclosed. Our choice to protest against your station and boycott your local advertising sponsors is not because of the one mistake you claimed you made, but it is because of your cold, insensitive posture toward the indignant vice of racism in the Black community, through being inequalitous toward the Black community. Because you didn't see the need for any retribution on you and your station's part by refusing to give the 15 minute

additional time to make up for the back burner position you gave to racism, by putting us off so many times, and then, take the position of leveling this down to one mistake you made: If you were sensitive you would feel a sense of obligation to want to restitute this situation because of the many times you prioritorized other issues before the issue of racism. If a person see[sic] a pregnant woman in travail[sic] for a long time, to the point that she might deliver and they remain neutral, definitely, that person communicates an insensitive, non caring spirit. And to have us wait this long with racism handled as a secondary issue, and then, have the audacity to say that your hair is rising is extremely putriditious and insensitive. And for this reason, we shall launch a full scale protest against your station, and we have decided to go all the way with it, to expose your racist, insensitive posture to the community, and we shall also boycott your local advertising sponsors until your racist posture is put to death, and an epitaph is erected over it. Because of the puissant[sic] endurance of this protest and boycott, more than your hair shall rise. You no longer deserve Black patronage, nor ethical White patronage.

We have proven and totally deictified to you that our motives are pure without insincerity and deceit, through our extensive amount of patience, much restraint, and impeccable temperance. That has been confirmed totally by virtue of the fact that we have not been like a wild stallion waiting for someone to open the coral[sic] gate in order that we might come charging out forcefully. But on the otherhand, we have been unastatic and totally temperate, in that we have not been overly anxious to protest against your station, and boycott your sponsors, or otherwise, we would have done it after we experienced the many broken

promises through the way we were put off many times, and had to wait for a long time for you to deal with those issues. And after they were finally done, they were done inadequately. But through your present racist posture through being neutral, by taking a cold and insensitive position through refusing to restitute us in this situation by giving the additional 15 minute air time. Because you have taken this staunch unethical position, you have left us with no other choice but to protest against your station and boycott your sponsors. And it shall be done with bastioning resilience, unapoplectic mobility, and inextricable puissance until your racial injustice is deleted, and totally put to death. You only have 3 days to respond to this letter if you want to stop the protest and boycott. If you are prepared to lose hundreds of thousands of dollars within the next few months, then, take lightly what I am saying. But on the otherhand, if you are sagacious enough to understand the significance and puissance of Black patronage, then, you need to settle this matter within 3 days, or otherwise, we are going all the way with the protest and boycott.

In Christ's love,

/s/ Timothy D. Williams Jr.
Pastor Timothy D. Williams Jr.

TDW/ca

Telephone No. (504)947-5381

APPENDIX C

October 11, 1992

EXHIBIT C

Mr. Nye, and Mr. Barton
WVUE-TV 8
1025 South Jefferson Davis Pkwy.
New Orleans, LA 70125

Greetings Mr. Nye, and Mr. Barton,

In truth, I am fully aware of the multiplicitous, and immensified, onus responsibilities embodied in your noble endeavors.

However, I am writing from a binated perspective, and I shall seek to be very brevitous in my disclosure.

First of all, we do appreciate some of the profitable things you sought to do, regarding the subject of racism and paternalism, and for your efforts, we are thankful, and shall be forever appreciative.

Nevertheless, we have sought to be reasonable, understanding, and very empathetic in our previous working relationship with you, especially with Andy Barton. We have worked hard in our labors and battles against racism and paternalism, in order that we might elucidate you to be more sensitive to our dilemma of inequality and unfairness through racism and paternalism.

But now, we are back where we started from, because you have decided to place racism on the back burner. Mr. Barton, we considered you a friend! In truth, you have made some efforts to balance the scales for Black people concerning racism, but your racist concepts about Black people finally come to the surface, when you said, "we were being unreasonable, and you didn't feel comfortable working with us."

Conclusively, I deplore, and exaccerbatingly excoriate you and Mr. Nye's position. I, and my people are tired of the vacillating, astaticisizing posture of the media when it comes to the vice of racism! We too no longer feel comfortable working with you, because you are not able to render a fair standard to Black people, but you seek to be fair with your own. None of us protested against you covering David Duke when you were showing him everyday! You rammed coverage about him down our throats morning, noon, and night, and none of us protested, and none of us are interested in anything he has to say! But we realized that even though he is a racist, yet, he is a citizen of the country, and has a right to be heard!

My other reason for writing, is to officially validate the fact that because of your neutral posture in deciding to take a back burner position toward racism and paternalism, while doing coverage on dogs, cats as number one issues over racism: we have decided to protest and boycott against your station, and your sponsors who take sides with you indefinitely until we break the backbone of your racism!

It is easy for you to take the position of placing a

band-aid on a cancer type posture toward racism, because you don't have the ugly child of racism incessantly riding on your backs with indignance. You have five (5) days to respond to this letter. We shall not boycott you until we finish dealing with a major issue that we are presently dealing with.

In Christ's love,

/s/ Timothy D. Williams Jr.
Pastor Timothy D. Williams Jr.

TDW/ca